the Freeman

Ideas on Liberty

OCTOBER 1971

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STANLEY YANKUS

A letter from down-under

A TIME COMES to most everyone when he tries to improve his situation by packing his belongings and moving across the prairies, mountains, and rivers. The freedom to move from one place to another is a valuable right. Observe how eagerly dictators suppress the free movement of people. No doubt about it, governments find it more difficult to saddle people with oppressive controls and taxes when freedom of movement affords an escape.

Twelve years ago my family and I migrated from the U.S.A. to Australia in reaction to government interference with my farming methods in Michigan. Since my arrival in Australia, hundreds of Americans have exchanged letters with me, discussing the pros and cons of migration. Parts of this correspondence may interest students of liberty who are exploring the possibilities of a fresh start in the Land Down-Under. Freedom was the magnetic idea which attracted hundreds of thousands of migrants to the U.S.A. from other parts of the world in years past. So, let's have a look at the prospects for finding freedom in Australia:

Dear ----:

Your letter reminds me of my struggle when I decided to migrate to Australia. I can appreciate your strong desire to find a nice quiet spot on this troubled earth where freedom is regarded as a good idea by your neighbors.

During the past twelve years of my life, I have thoroughly enjoyed the adventure of living the good

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life in Australia. Although I'm enthusiastic about the land of the kangaroos, kookaburras, and koala bears, I never tell any Americans to migrate here. You may wonder about that, so please let me explain:

Thousands of American migrants have already arrived in Australia and more are on the way. Some have succeeded in establishing homes, finding jobs, and making friends with their new neighbors. Others, finding numerous faults and becoming convinced they made a mistake, have returned to the U.S.A. Now if you want a good opinion of Australia, you can get it by asking an American who stayed here; and if you want a bad opinion of Australia you ask one of those who returned to the U.S.A. You can have your choice of good or bad opinions from people who are altogether sincere.

But please note: There are not two different Australias. The reason for the difference of opinion about Australia lies within each person's character – not in the external environment. Some people buckle at the knees when confronted with a problem that is heavier than a feather. Others are resourceful and self-reliant. So, a program of self-improvement is important in your life, no matter where you live.

I have often been asked, "Do the Australians like Americans?" Such a generality is quite meaningless. Obviously, not all of the Australians nor all of the Americans are going to like each other. Furthermore, not every Australian likes each of his fellow Australians, and the same can be said for every nationality in the world. The question we are really concerned with is, "What must I do to get others to like me?" If you pet a dog, he will respond by wagging his tail in appreciation, and if you kick the same dog he will respond by snarling or biting you. Likewise, a given person may be kind to you or bad-tempered with you. If you want people to like you, it is best to practice kindness and other qualities of self-improvement.

"What is the condition of the economy in Australia?" is something migrants want to know. Now let us suppose that economic conditions in Australia were the best ever, but here is a poor fellow recently hit by a truck while crossing the street, resulting in loss of the use of his legs. Furthermore, he has cancer and rheumatism and he lost his life's savings in a company that went bankrupt. As you can plainly see, the buoyant condition of the economy means nothing at all to this unfortunate fellow, nor does it mean that much to

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you. If you are industrious and follow a program of self-improvement, you will also have enough self-confidence to find a way to earn a living in Australia.

You well know that we don't get things in life from Santa Claus; we have to earn what we get. You are not going to find freedom in Australia; you will have to earn it by practicing self-improvement. However, some of my acquaintances haven't been able to see a connection between freedom and self-improvement. When they think of self-improvement, they think of learning how to fix cars, or writing legibly, or being courteous, or dressing neatly, and so on. "How is that going to promote the cause of freedom?" they ask.

Perhaps I can illustrate the close relationship between freedom and self-improvement by quoting a prospective migrant who wrote to me: "I'm fed up with government controls, high taxes, and inflation in the U.S.A. and I want to migrate to Australia." A few lines later he asked, "How much money will the Australian government pay toward my assisted passage to Australia?" If this fellow had practiced self-improvement and become self-supporting, he would have realized that the Australian government has no money of its own to give him. The only way the Australian government can provide migrants with assisted passage money is by imposing higher taxes or more inflation, or both, on the Australian taxpayers.

I have often been asked if there is more freedom in the U.S.A. or in Australia. If you put all the law books of the U.S.A. in one pile and all the law books of Australia in another, you would have two big piles of restrictions. The quickest way to reduce the number of restrictive laws, and thereby increase freedom, is through self-improvement. Self-improvement really means teaching yourself to be good. Good people do not require restrictive laws, nor do they impose them on others.

Another American wrote to me, saying, "When I arrive in Australia, I won't have enough money to travel all over the place. Can you tell me the best place in Australia to live?" I replied, "I will gladly tell you the best place to live in Australia, but first you must tell me the best place in the U.S.A." Of course, he never answered my question because there is no such thing as the best place. In selecting a new place to live, we try to find as many as we can of the conditions we like best. A teacher will want to live near schools; a vegetarian will want to live near fruits and vegetables; a sailor will want to live near the sea; and so on.

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No Paradise on Earth

You will never find a Paradise which affords exactly what you want. If you asked a hundred people to individually describe the ideal place to live, its name would be "Chaos." What is the ideal house, car, dog, school, job, food, or whatever? There are disagreements galore! No matter where you migrate, you will find people who disagree with one another. The best way to get along with others and the best way to promote freedom is to mind one's own business and practice self-improvement. If that doesn't work, nothing will.

A correspondent from Rhode Island writes: "We cannot afford to pull up stakes here and move to Australia and then decide we don't like it, and move back. We just don't have the money to do this." This man's problem reminds me of the comment by one of our neighbors in Michigan as we were leaving for Australia: "I don't see how you can move to Australia with your family when you don't know anything about the place. How do you know you will like it there?"

"When I got married," I replied, "I didn't know if everything would turn out all right. I took a risk then, and I'm going to take another risk by moving to Australia."

Every time we read a new book, or get a new job, or meet a new acquaintance, or taste an apple, or any of a thousand other events, there is a risk that we won't like our experience. Risk-taking is a condition imposed on us by Creation; the future is unknown to us. Unexpected events frequently occur. The fear of taking risks drives many people into government-guaranteed welfare schemes which are so destructive to freedom. Governments seem to be far more effective in eliminating freedom than in removing risk. I gladly accepted the risk of solving these problems — I certainly didn't want the government to select my job, my home, or my friends. Nor do I assume you really want to avoid such risks.

After settling in South Australia, I heard good reports about the States of Western Australia and Queensland. No matter how excellent the conditions of life, we imagine they could be much better elsewhere. Herbert Shelton, one of my favorite authors, shrewdly observes: "Wherever you choose a place [to live] you will wish ever after that you had chosen a different one." My experience tells me that perpetual dissatisfaction is part of human nature. If we were completely satisfied with everything, we would cease to explore, and to discover, and to live.

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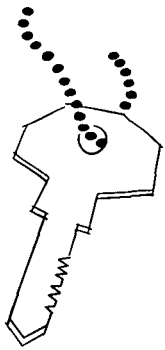
Changing concepts of



PRIVATE PROPERTY

BERTEL M. SPARKS

IN THE ENTIRE HISTORY of civilized society there never has been a time when the concept of private property was not undergoing change, and it is unlikely that there ever will be such a time. Since the concept of private property is a legal concept, it is appropriate to add that civilized society cannot exist without law and that law cannot exist without property. While some may doubt that last statement, it is believed that such doubts will be removed upon a few moments reflection. For whether the legal topic under consideration is the Code of Hammurabi or the most recent pronouncement from the nearest local court, the rule of law involved is likely to be concerned primarily with the relations of individuals to things. That is to say, it will concern some concrete application of society's attitude toward or understanding of property.

All this leads to the conclusion that any complete story of the changing concepts of private property would include a complete history of civilized society. No such Herculean task is undertaken here. This paper will be limited to a consideration of the multiple nature of property rights and the power of the state to add to or subtract from those rights. Particular emphasis will be focused upon the owner's right to transfer his property interests regardless of how those interests may be defined.

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Property, a Bundle of Rights

As stated earlier, the concept of private property is a legal concept. That fact calls for some preliminary explanation. When the layman uses the word property, he ordinarily thinks of houses and lands, articles of clothing, tools, machinery, and other things capable of being owned. To the lawyer the word property has an entirely different meaning. When the lawyer uses the word property, he is not thinking of a man's possessions or holdings. Instead he is thinking of a man's legal rights with respect to those things. There is the right to use, the right to exclude others, the right to sell, the right to mortgage or pledge, and many others. The legal profession has rarely ever attempted any complete catalogue of these rights. As lawyers they deal with particular rights as they present themselves without too much thought concerning other rights that may exist in the same object. A man's "property" in a given object consists of the total bundle of rights he has in that object. This bundle of rights may be broken up and divided into its component parts in much the same way that a bundle of sticks may be broken into the individual sticks of which the bundle is composed.

The use of the term "private property" necessarily refers to the rights individual persons have in or to that particular thing. But no analysis of such private rights is complete without some attention being given to the rights of the group. It is the rights of the group, either real or pretended, that often places restrictions upon the rights that may exist in the individual. The expertise of the lawyer must be called upon to provide a working definition of the boundary between the rights of the private owner and the power of the state to regulate the use and enjoyment of those rights.

Individual vs. Groups

In his efforts to lay out that boundary the lawyer is faced with the fundamental question whether the rights of dominion and control over the wealth of the world should rest in the individual or in the group. If such rights rest ultimately in the group, then we have common ownership which places title to the earth's resources in the state and gives the individual only such rights of user as the state chooses to confer upon him. That theory is antagonistic and foreign to Western traditions, if not in fact to all civilized traditions. Nevertheless, it is a theory which, if not understood, is in danger of being unwittingly accepted.

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No Absolute Right

Almost every American is ready to declare a strong belief in private property but very few Americans can give any intelligible explanation of what they mean by private property. Sir William Blackstone, a famous legal scholar who has had tremendous influence upon Anglo-American institutions, began his definition of property by calling it an "absolute right . . . which consists in the free use, enjoyment, and disposal of all [a person's] acquisitions without any control or diminution. . . ."[1] Most Americans who have not given serious thought to the matter would probably be satisfied to end the definition there and to accept it as absolute dogma. But any careful examination of that incomplete definition will convince us that it is insufficient standing alone.

We know that that absolute right does not actually exist. The presence of a property tax, however small, places some qualification upon it. But there are other qualifications. Our pious assertion that a man may do as he pleases with that which is his own is always qualified by the equally pious assertion that a man may not use his own in a manner to injure that of another. Blackstone recognized that the right was less than absolute but neither he nor anyone else has ever been able to state clearly how much less.

Blackstone completed his definition by adding a phrase that tends to make his entire statement sound paradoxical. He said property was an "absolute right . . . without any control or diminution, save only by the laws of the land." There is the rub. A man's property in a given object includes absolute dominion over that object except in so far as that dominion is qualified by the laws of the land. To what extent is that dominion qualified by the laws of the land? A more fundamental question could be, to what extent *may* it be so qualified?

These are not hypothetical or purely academic questions. They are questions that are being encountered daily in the market place within the context of concrete cases. And when so encountered they must be answered. The primary responsibility for providing the answers rests upon the legal profession, but at least some of that responsibility must be shared by every responsible citizen. When the state attempts to remove a particular right from that bundle of rights constituting private ownership, it is the lawyer who is called upon to decide whether that right is removable

[1] 1 Blackstone, *Commentaries* 138 (Sharswood ed. 1874).

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while private property remains, but it is the citizen whose right is being taken who must bear the consequences. If private property is a bundle of rights, the lawyer must search for the source of those rights before he can analyze any possible restriction upon their exercise. He must ask, from whence comes this right of private property anyway? Is it a fundamental, inalienable right or is it a mere privilege granted by the state as a matter of grace? If it is a mere privilege, it may be withdrawn by the state. If it may be withdrawn with impunity, the citizens are little more than slaves.

"Before and Higher Than Any Constitutional Sanction"

Numerous state constitutions have sought to give expression to the right of private property as being something that is fundamental and beyond the reach of political power in a free society. One of the strongest of such statements is that found in the Constitution of Arkansas where it is declared that "the right of property is before and higher than any constitutional sanction."[2] But that declaration probably does more to intensify than to solve the inquiry into the true source of this right that is "before and higher than any constitutional sanction."

[2] *Ark. Const.* art. 2, sec. 22.

John Locke, whose writings were well known and highly regarded by the founders of the American Republic, found a philosophical basis for private property in man's right to the integrity of his own body. Locke interpreted the Holy Scriptures, which he considered binding upon all men, as granting all wealth of the earth to mankind in common. But Locke regarded every man as having a property in his own person, in his own labor. He then concluded that a man could by his labor remove a thing from its state of nature and place it within his private domain.[3] Locke's analysis of this point was accepted by Blackstone[4] and through him became a part of the thinking of ordinary citizens of this country. The extent to which this approach was diffused among all levels of the citizenry a few generations ago is illustrated by the fact that it was included as part of the grade school reading material provided in one of the most widely used series of texts available during the latter part of the nineteenth and the early part of the twentieth centuries.[5]

[3] Locke, *Two Treatises on Civil Government*, Bk. II, c. V (George Routledge & Sons, 2nd ed. 1887).

[4] 2 Blackstone, *Commentaries* 1-15 (Sharswood ed. 1874).

[5] McGuffey, *Sixth Eclectic Reader* 410-415 (rev. ed. 1879).

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Qualifications Upon the Rights of Ownership

But Locke, Blackstone, and the state constitutions all recognize that property ownership is something less than absolute dominion. Reference has already been made to the qualification expressed by Blackstone. When the writers of the Arkansas Constitution declared the right of property to be "before and higher than any constitutional sanction," they hastened to add that "private property shall not be taken . . . without just compensation,"[6] thus recognizing that there were circumstances under which private property could be taken. And when Locke set forth his doctrine concerning a man's right to assert his private dominion over the earth's resources by joining his labor to those resources, he hastened to add the precaution that this is true, "at least where there is enough and as good left."[7] Thus there is implicit in every analysis available thus far a recognition of a basic conflict between private ownership and public control. There is an awareness that ownership of a thing does not necessarily mean absolute dominion over that thing.

[6] *Ark. Const.* art. 2, sec. 22.

[7] Locke, *Two Treatises on Civil Government*, Bk. II, c. V. sec. 27 (George Routledge & Sons, 2d ed. 1887).

What Incidents of Ownership Does the Law Recognize?

All this leads to an inquiry into the meaning of ownership. A man's property in a thing has already been described as a bundle of rights with reference to that thing. Each right in the bundle of rights may be described as an incident of ownership. In so far as particular rights may be added to or subtracted from that bundle without destroying the bundle, ownership is an arbitrary term. Its meaning depends upon what incidents of ownership the law recognizes. The law's recognition of these incidents has never been a constant or a static thing. There has been a continuous change, and each change has brought with it a change in the meaning of ownership and has thereby caused an alteration in the basic concept of private property.

Even during the early feudal period in England it was said that the man occupying and using a given tract of land owned it, but his ownership was a very limited one. It was a system of land tenure under which, in the strictest sense, land was "held" but not "owned." The occupant or "owner" on the land actually held it under a superior lord to whom he owed certain obligations. The lord in turn usually held under a still higher lord and so on in an ascend-

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ing pyramid with the crown at the apex as chief lord who, in legal theory, owned all the land in England. In a very real sense the "owner" actually on the land tilling the soil was bound to that land. He could not sell it without the lord's consent.[8] It was thought that this was necessary to avoid the possibility of having the lord's enemy installed on the land. The right of inheritance was restricted in that, when the owner died, his heir could not take up the estate until he was of age and then only upon payment of the appropriate fees.

There were other incidents of feudal tenure which tended to restrict the meaning of ownership but it was the restrictions upon the freedom to transfer that held the center of the stage. Even in this tenurial system men occupying the land were called freemen but in fact they were not free. The restrictions upon the individual's right to transfer his holdings literally tied him to the land. His station in life was determined more by his status with reference to the land than by his own efforts and ingenuity.

Of course the intermediate lord was under a similar burden so far as his efforts to transfer his own holdings were concerned. But his position was different in that his holdings were larger and of a higher order. He was economically secure and had a comfortable income. It was the fellow who had the least that was under the heaviest burden, for until the man higher up let loose, there was nothing available for the man at the bottom to acquire. And whether a clog on the right to sell is labeled a medieval doctrine of feudal tenure or some civil rights act of the twentieth century, its effect in the market place is the same and the man at the bottom is always the loser.

Political freedom and the whole gamut of civil rights were impossible until there existed the freedom of property which emerged as the burdens of feudal tenure were cast off. While these burdens were not cast off at a single stroke, what is probably the most significant step along the way took place in 1290 when an act of Parliament extended to every free man the right to sell his lands or any part thereof without any interference from any intermediate lord.[9] Even

[8] The exact extent and nature of this restriction upon alienability is a bit uncertain but it is clear that restrictions did exist. In this connection it is interesting to note that in 1256 Henry III issued a writ declaring it an invasion of Royal rights to sell without his consent lands held under him. See 1 Pollock & Maitland, *History of English Law*, sec. 9 (2d ed. 1923).

[9] "Statute Quia Emptores," 18 Edw. I, cc. 1-3 (1290).

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after this enactment numerous burdensome incidents remained. Prominent among these were the control the lord had over the estates of infant heirs and the obligation of the heir to pay a fee prior to taking up his inheritance.

The Struggle Toward Freedom

But with the single leap forward taken in 1290 there began a step-by-step process which reached its climax when the last substantial burden imposed by the tenurial system inaugurated by the Normans who conquered England in 1066 was finally abolished in 1660.[10] But it should be remembered that it was truly a step-by-step process and that each step was characterized by a bitter struggle. The legal history of that entire period can be quite accurately described as a struggle for more incidents of ownership in the individual. Burdens and restrictions were being removed and new rights were being acquired by the owner. The bundle of private rights was expanding.

But the right to sell, including the right to give away or dissipate according to the owner's own wishes, continued to hold the center of the stage. That right to sell, that economic mobility, or in the jargon of the legal profession that freedom of alienation soon became the chief factor in the development of individual freedom of all kinds. It also stimulated the economic use of property. When the occupant of land became free to sell at a price agreeable to him without seeking the consent of his lord and without paying a fine to his lord for having done so, he began to take on the coloration of a free man in the true sense of that word. Ownership took on new meaning. It included a power to cash in as well as a power to use. And when that freedom was achieved, men no longer remained serfs, they no longer remained slaves, and the economy no longer remained static.

It is no mystery that the real beneficiaries of this political and economic transition were those who possessed the least; it was the "have nots" rather than the "haves." In any society those who are already wealthy, who are already entrenched, who "have it made" are more likely to be interested in preserving their wealth than they are in searching for easier means of transferring it. Those of lesser means are the ones who are in a position to gain from freedom of exchange. And as soon as free economic mobility was achieved, the fellow at the very bottom of the feudal pyramid

[10] "Statute Abolishing the Court of Wards and Liveries," 12 *Car.* II, c. 24 (1660).

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could exchange his services for a share of what was held by the man near the top.

In this system of free exchange, not only was there no necessity for serfs or slaves, but there ceased to be any place for parasites. Property tended to shift to those who put it to the most economic use. And there emerged the day of plenty which, although it is unique in the history of the world and is to this day confined to a comparatively small part of the earth's surface, is so taken for granted in this country that there is a tendency to forget its source.

Restraints on Future Use

But as soon as man became free to transfer his property by either deed or will without interference from the state, other kinds of interference began to appear. There developed a theory of absolute ownership whose very existence tended toward its own destruction. If property ownership meant absolute dominion, it was only logical to assume that it included the power of the owner to dispose or transfer on his own terms. He could create any estate or interest he chose and the fact that the estate or interest chosen tied up the property in an unproductive use long after the transferor had ceased to live appeared to make no difference. Property became tied up in families and became unavailable to future generations. The tying up of property in this manner is an exercise of freedom of the will, a favorite freedom of John Locke, but a fair question to ask is freedom of whose will? It became a freedom of the dead to control the economic affairs of the living.

Both the advantages of freedom and the manner in which that freedom could be used to tie up property in a most unfortunate way can be illustrated by imagining some Sir Galahad emerging from the feudal period and finding himself the owner of a farm. What does that ownership mean? The farm, that is the soil, was there before Sir Galahad came; it will be there after he is gone. Sir Galahad's ownership, his property, does not refer to the soil. It refers to the rights Sir Galahad has in that soil. What are those rights? He has the important right of raising crops of his own choosing. He may erect whatever buildings he is capable of erecting. He may live in and occupy those buildings. He may exclude others from them. In addition to all these, and still other rights, he has the right to transfer his ownership to another. He may sell it or even give it away if he chooses. He may do either without consulting any overlord or anyone else other than his transferee.

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He sells his farm and buys another. He sells that one and buys still another. He finds that this freedom of alienation which is now an attribute of ownership is one of his most important freedoms. It gives him mobility. It gives him freedom to change his occupation, to move his home to a new location. He is no longer bound to the land. Sir Galahad is a diligent worker and a shrewd businessman. His farming operations prosper. He invests and reinvests. He buys and sells at a profit until he becomes the wealthiest man in the community.

Sir Galahad acquired his vast holdings through the exercise of his own ingenuity in a free economy. It was the annexation of his own labor and his own skill to the wealth involved that made it his own. It would seem that he should be perfectly free to dispose of it, not only to a person of his own choosing, but upon conditions of his own choosing. Suppose he chooses to dispose of it through a system of complicated contingent and conditional schemes some of which might not become absolute for three or four generations. The motive for such a plan might be nothing more sinister than a desire to keep that which has been earned by the sweat of the brow within the family blood line.

But if this is permitted in unlimited measure, the freedom to dispose tends to become a freedom to tie up which in turn becomes a freedom to prevent rather than encourage future development. If the possessory owner has a mere life estate or some other restricted interest, he will have little interest in making permanent improvements which will endure beyond his period of ownership. And even if he is so inclined, it is unlikely that he will have the ability to do so. He is not in a position to give the kind of mortgage necessary to get a favorable loan. Under these circumstances the freedom enjoyed by Sir Galahad extends beyond his own lifetime and restricts the freedom of future generations.

Rules Against Perpetuities

But a people who had made great personal sacrifice to free themselves of one kind of restriction upon their right to deal with the fruits of their own labor could hardly be expected to remain passive about accepting the same or similar restraints in another form. Having freed themselves from so many stultifying public restraints imposed by a system of feudal tenure, Englishmen were well prepared to resist any effort to impose the same restrictions through private arrangements. The result was a modification of the

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law of entails and the invention of numerous rules designed to prevent any private interference with economic mobility.

It was in this atmosphere that those rules known to lawyers as the destructibility rule and the rules against perpetuities, accumulations, and restraints on alienation came into being. While a substantial body of rather complex law has grown up around the operation of these rules, in their essence they are nothing more than efforts to secure to the living generation control of the world's assets without interfering with the freedom of alienation any more than is absolutely essential to the accomplishing of that purpose.

Thus it was that the freedom of alienation, that is the individual's freedom to buy and sell as he sees fit, became the policy goal that gave birth to numerous rules of property law that persist to this day. In addition to its being the sole justification for the rules referred to above, much of the modern law of conveyancing is law designed to foster the free transferability of property. It is a frequent topic for discussions at bar association meetings and legal institutes. Title standards are adopted and marketable title legislation is enacted for this purpose.

The American Founding Fathers and those concerned with the framing of state constitutions appear to have been thoroughly convinced that the free institution of property was the cornerstone upon which all other freedoms depend. This fact is demonstrated by the frequency with which provisions were inserted into their statutes, or even their constitutions, declaring that all lands are allodial, that is free, and that feudal tenures of every kind are forever prohibited.[11] They looked upon the right to cash in on the product of one's own labor as an essential element of any meaningful concept of a free man. They saw it as the right to elevate the human personality from a position of status where one's social and economic course is predetermined to a position of contract where each one is free to determine his own course. Or as a more recent writer has expressed it, "in organized societies the degree of liberty among human beings is measured by the right to own and manage property, to buy and sell it, to contract."[12]

Freedom of Movement

Experience has shown that where free movement of property

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[11] E.g., *Minn. Const.* art 1, sec. 15; *Wis. Const.* art. 1, sec. 14. See generally, 1 *Powell, Real Property.* par. 158 (1949).

[12] Garber, *Of Men and Not of Law*, 34 (1966).

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has existed the economy has prospered and the wealth, especially the wealth of the least wealthy, has multiplied. This is not a surprising result. It is merely the normal and natural result of giving a man an opportunity to employ his talents in a way most pleasing to him and to enjoy the fruits of his efforts in the manner he selects. If he is denied the right to make his own choice, society is denied the benefit of the productive efforts that choice would demand. The productive capacity of the individual, and hence the productive capacity of society as a whole, will tend to decline. This principle is implicit in the statement of Jeremy Bentham that "no man can be so good a judge as the man himself, what it is gives him pleasure or displeasure."[13] The same idea is supported by Ludwig von Mises' declaration that "the average man is both better informed and less corruptible in the decisions he makes as a consumer than as a voter in political elections."[14]

But this long history of the expansion of individual rights to property does not mean that private dominion has now become absolute. It never has been absolute and it is doubtful if anyone will seriously contend that it should be made absolute. The state still does, and it is believed it must, retain some control. Property taxes are still collected. The right of eminent domain is still exercised. During times of war or other national emergency, property has been requisitioned or expropriated when necessary to the state's defense. These acts by the state are necessarily encroachments upon the individual's dominion over the things he acquires. The significant question to ask is how far may these encroachments extend?

Zoning and Planning

Fundamentally, it is a problem of defining the point at which the inalienable rights of the private owner end and the inherent power of the state begins. It is not too much to say that that question presents the most challenging problem facing the legal profession, and in fact the entire American society, at the present time. The future course of man's progress toward personal liberty, human dignity, and civil rights depends upon how he answers that question.

In recent years zoning and city planning have become important parts of American law. It is not within the scope of this paper to make any judgment as to whether that development is good or bad.

[13] Bentham, *Principles of Morals and Legislation*, 172 (Oxford at the Clarendon Press, 1879).

[14] Mises, *Socialism*, 21 (1951).

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But it is within the scope of this paper to point out that it is a development that constitutes a direct encroachment upon the freedom of the individual to do as he pleases with his own property. Where such schemes are in operation the individual owner is not free to devote his property to the uses most suitable to his needs. An incident of property ownership has been removed. An important right has been taken from the bundle of rights constituting the owner's property in a given tract of land.

Rent Control

Other rights are slipping from the bundle from time to time. It is conceivable that in some instances the loss might be necessary to the well-being of society. The distressing thing is that the loss often goes unnoticed. During World War I it was felt necessary to place statutory restrictions upon the amount of rent a man could receive for a given housing unit. After the war most of these regulations were removed. During World War II rent controls were again inaugurated and this time they have been a little slower in their disappearance. Some are still in effect. And in some quarters statutory rent control is now being accepted as a permanent institution.

Effect on the Landlord

This paper is not an appropriate place to debate the merits or demerits of this kind of legislation but it is an appropriate place to call attention to its meaning. It was first presented to the public as an emergency war measure but more recently it has been referred to as an instrument for the creation of a new type of tenancy. It has been said that the "statutory tenant," that is a tenant whose rent is determined by a statute rather than by the market, has a new type of estate hitherto unknown to the law. He probably does. But that kind of analysis is incomplete unless it goes further and identifies the kind of estate held by the "statutory landlord." And this second step has rarely ever been taken. If the question is raised at all, the answer is likely to be that the landlord has a fee simple which is defined as the highest estate, that is the highest kind of ownership, known to the law. If that answer is accepted as satisfactory, then it must be admitted that the owner of the highest estate known to the law is denied the privilege of using his holdings in the manner most desirable to him. He is not permitted to rent at a price mutually agreeable to him and his tenant. A substantial incident of ownership has been removed.

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In 1948 the Supreme Court of the United States struck at the very heart of private ownership as traditionally understood. Although the decision received wide publicity, very few people gave any indication of being disturbed; or if they were disturbed, it was for reasons other than the court's attack upon private ownership. Prior to 1948 the power to dispose of real property included the power to make certain covenants mutually agreeable to the buyer and seller. Prior to 1948 these covenants were said to run with the land and to be binding upon subsequent owners. The existence of such covenants became a part of the title itself and entered into the calculation of property values.

But in 1948, in the case of *Shelley* v. *Kraemer*,[15] the Supreme Court of the United States was faced with a covenant against sale or lease to members of a particular race. Such covenants had long been inserted in deeds and had become quite common in all sections of the United States. Nevertheless, the Supreme Court chose to ignore the covenant's existence. The fact that property values depended upon the covenant and that mortgage loans might have been extended in reliance upon it made no difference. This might possibly have been an appropriate time for a judicial determination that covenants of this particular kind were inconsistent with American public policy and therefore without any legal effect. No position is taken here as to whether such a decision would have been wise or unwise. But in any event that route was not taken. Instead, the court, in an opinion written by the Chief Justice, displayed a total lack of concern for private property by declaring that the covenant was valid but would not be enforced.

Any effort to rationalize the 1948 decision on the theory of state action is antagonistic to civilized society unless that society is ready to deny recognition of private property altogether and adopt absolute group ownership. A man does not have a property in anything unless he has a right which the state will protect. As soon as the state extends any protection there is clearly a case of state action. If protection is withheld while the right is officially recognized, there is an express invitation to self help where the law of the jungle prevails.

"Open Housing"

An even more serious inroad on private ownership has appeared in recent years in the so-called "open housing" legislation. When this type of enactment appeared

[15] 334 U.S. 1 (1948).

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on the local scene in New York City in 1957,[16] it caused very little excitement among the nominal adherents of the free market concept. This in spite of the fact that it almost completely abandoned the theory of freedom of alienation by taking away from the seller the right to choose his own customers. More specifically, it prohibited sellers in certain classifications from discriminating among buyers because of the buyers' race or religion. Freedom of alienation was theoretically preserved, but anyone who has had any experience in buying or selling real estate knows that freedom of alienation has very little meaning if it does not include the freedom to choose one's own customers.

The freedom that was preserved by this legislation is remarkably similar to the freedom that prevailed in England prior to 1290 when the property owner was free to sell except that the lord (the king being the supreme lord) had a veto power over the choice of a buyer. Nevertheless, the legislation in varying forms became popular, spread to other states, and found its way into a Federal enactment in 1968.[17] Prior to its enactment on the Federal level testimony before the Senate Subcommittee on Constitutional Rights pointed out that its effect in the market place would be to reduce the amount of new housing available in coming years and to decrease rather than increase the access of minority groups to that which was available.[18] It would be a mistake to attribute the recent decline (some might prefer to say crisis) in the housing industry to that cause alone but it would also be a mistake to ignore the possibility that it might have been a contributing factor.

Back to Feudalism

The concept of private property appears to be moving in a circle that is almost closed. The feudal ages found "freemen" in virtual serfdom. Private ownership existed but it was a very limited concept. The incidents of ownership were comparatively few and such as existed were substantially restricted by the recognized power of the state. But that period was a period of struggle for more and more freedom and more civil rights in the individual. Men were demanding more control over their own destiny – more of the fruits of their own labor. The result was a steady increase in the incidents of private ownership and a corresponding reduction in the

[16] *Local Laws, City of N.Y.*, 1957, No. 80.

[17] 42 *U.S.C.A.* secs. 3601-3619 (1970).

[18] 112 *Cong. Record*, 14715-14717 (1966).

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state's power to control. The significant legal developments were centered around efforts of the law to preserve the freedom of movement of private property. This trend continued until very recent times when the individual's freedom both to use and to dispose of the fruits of his own labor seemed virtually secure.

But throughout this period of development there never was any clear line between the conflicting forces, that is to say, between the incidents of ownership sacred to the individual on the one hand and the rights exercised by the state on the other. Eventually the trend toward individual freedom found itself in reverse. The bundle of rights constituting ownership began to shrink. Sticks were withdrawn from the bundle and handed over to the state. The state took a more active part in controlling the use of things still owned by individuals. The owner lost his right to fix the price at which he was willing to rent. He lost the right to dispose of property on terms of his own choosing. He lost the right to select his own customers.

Default Rather than Design

Why is this decline in the importance of the individual together with the corresponding increase in the function of the state taking place? It could be the result of a conscious choice by a society which believes it has gone too far in the direction of private ownership and that a retreat is desirable. It is doubtful if that is the case. It is doubtful that any such conscious choice is being made.

What is more likely is that the transition is going more by default than by design. We have concerned ourselves so much with other things that we have almost forgotten that there is a right of property which "is before and higher than any constitutional sanction." We talk about such things as freedom of speech, freedom of the press, freedom of religion, and freedom from false arrest, without giving much attention to the foundation upon which all these freedoms rest. We have forgotten that these are but the symbols, the ornaments, and the outward manifestations of a solid structure without which none of them could exist. We have become so interested in the cake's icing that we have ignored the cake. We have become victimized by the often repeated but absolutely false assertion that there is a conflict between property rights and human rights. The truth is that private ownership of property is the greatest instrument of freedom ever designed and it is

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sheer folly to speak of granting a man freedom while withholding that instrument from him.

Facing the Issue

It is a long way from the serfdom of the medieval manor to the American statutes and constitutions abolishing feudal tenures. Americans have arrived at an age when freedom of ownership is so taken for granted that there is a danger that we might inadvertantly allow it to slip out of our hands. If our freedom is to be taken seriously, we must acquaint ourselves with what is actually happening in the name of social justice, equal protection of the law, and other glittering generalities that are without meaning until they are given meaning in the context of human experience. "Social justice" can become a slogan used to promote both social and personal injustice. "Equal protection of the laws" can be used as a mask for universal oppression through law.

As we move from one age to another there is but one fundamental change in the concept of private property. The rate of the change as well as the direction of the change may shift from time to time. But the question is always one of deciding what incidents of ownership rest in the individual and what incidents are claimed by the state. If human freedom is to be preserved, that question must be faced squarely. Questions concerning zoning, rent control, restrictive covenants, and all the others cannot be intelligently answered until they are placed within the context of that basic issue. When they are placed within that context, it is likely that the most vocal proponents of some of these new schemes will become their most violent critics.

IDEAS ON LIBERTY

The Source of Wealth

IT IS the great multiplication of the productions of all the different arts, in consequence of the division of labour, which occasions, in a well-governed society, that universal opulence which extends itself to the lowest ranks of the people.

ADAM SMITH
Wealth of Nations, 1776

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OWNERSHIP as a SOCIAL FUNCTION

PAUL L. POIROT

In the market society the proprietors of capital and land can enjoy their property only by employing it for the satisfaction of other people's wants. They must serve the consumers in order to have any advantage from what is their own. The very fact that they own means of production forces them to submit to the wishes of the public. Ownership is an asset only for those who know how to employ it in the best possible way for the benefit of the consumers. It is a social function.

LUDWIG VON MISES, *Human Action*

IF ONE were obliged to list a single cause of our age of revolution, it might be this: *the irresponsible use of private property.*

Serious enough is the problem of stewardship and responsibility for disposition of one's own property. Infinitely greater are the problems created in the so-called charitable disposition of other people's property, when one votes to tax others for funds to be distributed to the "worthy" poor.

By this process, whole classes of "beneficiaries" may be deprived of their human dignity and of the opportunity to live as responsible, mature individuals:

- the young, publicly schooled to "sit in" and picket for favors;
- the aged, socially secured against productive use of their talents;
- hypochondriacs, medicared into terminal illness;
- the indolent, paid not to work;
- unwed mothers, seduced by subsidy to fuel the population explosion;
- farmers, paid to grow surplus crops, or not to farm at all;
- businessmen, sheltered by tariffs and embargoes and protectionism generally;

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– craftsmen and other professionals guarded against competition through a union or association or licensing arrangement of one kind or another;
– an endless list of personal failures, financed at the expense of everyone else.

Even so, to speak of *the irresponsible use of private property* immediately calls to mind the widely publicized charges of misbehavior leveled against "merchant princes" and "robber barons" of an earlier century. And it well may be true that some individuals in those days made some mistakes.

In his definitive history of property rights (*In Defense of Property*, Regnery, 1963), Professor Gottfried Dietze points out that: "In the nineteenth century, private property enjoyed greater protection than ever before . . . property rights received far-reaching protection through legislation, adjudication and juridical science." In other words, the full force of law and order and government protection had been mustered in support of the fundamental right of the owner to do with his property as he pleased. That was the juristic attitude toward property rights, nor should it be altogether surprising to find such property-protecting governments occasionally granting to various owners or groups a bit of special privilege and political power. In any event, it is clear that individualism generally was favored over collectivism in America and much of Europe during the nineteenth century – and that the tide now runs strongly in the other direction.

The point at issue here is whether or not the owner's right to his property carries with it any corresponding duty or responsibility toward others. And the tendency of the law in the nineteenth century was to say no; let the owner do with his property as he pleases so long as he doesn't interfere with the property rights of others.

Dangerous Protectionism

While such a view toward property may be economically and morally sound, it probably reflects poor political strategy. There is every logical reason, in a market-oriented economy, why decisions concerning the use of property are best left to the owner. But the owner may properly be accused of negligence if he relies heavily upon the government to defend his title and does not try to explain to others the general blessings of private ownership and open competition. Without that explanation, and understanding by the people,

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the same governmental force used to protect property can be perverted into a weapon for plundering, a perversion well advanced in the twentieth century. Owners who would protect private property are now obliged to explain to plunderers why property rights should not thus be violated.

The term "private property" often is narrowly used to signify only the material possessions of the wealthier members of society. But in a broader and more constructive sense, "property rights" are synonymous with "freedom" and include the individual's right of self-control, self-respect, self-responsibility, and personal choice as to how he'll use his own life. A man without property rights – without the right to the product of his own labor and without respect for the equal right of every other person – is not a free man.

How, then, does one explain to would-be plunderers that their own and the public interest are best served by private ownership rather than public ownership of scarce resources? Perhaps the most likely point of agreement would be this: one does not use a club to explain a good idea to a reasonable person. The point is of great importance: the general welfare is served by reducing violence and fighting to a minimum. Once men agree to stop plundering one another, they are in a position to consider and to act in other ways to satisfy their wants.

For the Best Management of Scarce Resources

When reasonable persons give thought to the ever-lengthening list of unsatisfied human wants, the impressive fact comes clear that resources are scarce. It is of utmost importance that resources be used efficiently, rather than wasted, if the satisfaction of wants is to be maximized. The reasonable person also must realize that the maximum satisfaction of human wants involves thought for the morrow as well as provision for immediate consumption. This means that some resources must be saved today and used as the tools and raw materials of further production for the optimum ultimate service of consumers. The important question, then, among reasonable men, concerns who should own the scarce resources of the world in order to assure the best possible service of the needs of the sovereign consumer, each the judge of his own needs. And the most reasonable answer, in the light of experience to date, is that an unhampered competitive market economy most effectively and efficiently places the ownership of scarce resources in those hands that best serve consumers.

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Producers and Consumers

A word about ownership may be appropriate here. Is the owner a producer or a consumer; are we speaking of production goods or consumption goods? As far as the goods are concerned, it doesn't matter. What matters is the owner's purpose, the reason why he wants possession. And the inevitable answer is that he is trying to satisfy his wants. The person who trades or participates in the market economy is both producer and consumer, nor is there any way he can be more one than the other in an open competitive society. A king or dictator or slave master might pretend to be all consumer, leaving the production to others, but that situation does not spell freedom.

Instead of dividing the ownership of all land and tools and other factors of production equally among all men, the general welfare depends upon directing such ownership and control into the hands of the most efficient producers of the goods and services wanted by consumers. Day in and day out, in the market place, consumers are expressing their latest preferences, handsomely rewarding some producers and letting others know they have failed. In the market economy, every owner is continuously obliged to justify, through service, his right to retain control of the resources he claims. Otherwise, consumers peacefully transfer the ownership and control into more capable, more productive, more serviceable hands. How is such transfer effected? Through the market system of recording supply and demand conditions in terms of prices that may be relied upon for the economic calculation of profit or loss. Consumers thereby direct the production of what best serves their needs, placing the ownership of property in the most capable hands.

Not all consumers, of course, are aware of the economic power they can effectively wield in their own interest through the open market. Some of them, forgetful or unaware of the inevitable scarcity of resources and the terrible cost of waste, are forever looking toward a political redistribution of property in the expectation of having more for themselves for immediate consumption. They fail to see that any such political redistribution thwarts the production they had ordered by way of prices bid in the market. Nor is this displacement of economic or market power by political power a simple *quid pro quo* – a foot gained for a foot lost. The tools of production are like a lever or a pry pole. It is possible to cut off a stove length from the lever for immediate use

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as firewood, but at a tremendous loss of leverage. It is rarely, if ever, in the consumer's best interest to destroy the tools of production.

Market Affords No Permanent Security to the Owners

As previously mentioned, governments of the nineteenth century may have been somewhat overzealous in the protection of property, trying to maintain the prevailing pattern of ownership even if the market indicated the desirability of change. Producers, once they have served the market demand and acquired title to a considerable block of resources, are not necessarily pleased to see a competitor come forth with a better idea to serve consumers. Established owners sometimes seek governmental protection, to exclude would-be competitors from the market. Such protectionism also curbs production and distorts or weakens the signals consumers send to market. A conservatism on the part of property owners that would use governmental force to frustrate consumer demand in the market is a socialistic form of conservatism, not in the general welfare.

In other words, the market affords no permanent security to the owner. Rather, it obliges him to prove himself over and over and over – endlessly. Consumers entrust property to his use, reward him handsomely if he serves them well, ruthlessly abandon him and reallocate the property the moment he fails to serve them. The market simply will not countenance the idea of property as an exclusive privilege of the owner. The market insists that property rights belong to those who best use the property to serve consumers.

The point for which we are striving here is that the present owners of property are not necessarily the ones one might expect to uphold and defend the competitive open economy – the market system. They are only human, and might well prefer the sort of protectionism nineteenth-century government gave property owners. So, it behooves the least of the property owners to protect his own interest in the market economy – his interest as a consumer. The man who brings his goods or services to market, in trade for property he would consume, is interested in the mobility of property for easy conversion to his purposes, not protectionism and stagnation in formerly profitable uses – and not a political diversion of property to uses no one is willing to pay for.

The market has been severely, and unjustly, condemned of late for allowing or even encouraging

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the waste of natural resources and the serious pollution of air, water, morals, and other requisites for clean living. But closer inspection will reveal that the properties thus polluted are those not clearly subject to private ownership and control: the atmosphere, rivers, lakes, oceans, parks, streets, schools, Appalachia, the body politic. They have been treated as public property, the responsibility of government, nobody's business in particular. Hopefully, it may be realized in time that such things as air and water and human virtue are scarce and valuable resources, that they should be subject to private ownership and control, and that government's sole responsibility is to protect the owner against robbers and vandals and at the same time hold him responsible if he uses his property in ways injurious to others. Private ownership is a social function.

IDEAS ON LIBERTY

An Open Society

CAPITALISM presupposes an open society in which the ends are determined by individuals, or by voluntary associations of individuals. It is fundamentally incompatible with the idea of an all-encompassing State purpose, or a single official Manifest Destiny – though it is thoroughly compatible with a church whose own purposes are extra-governmental, either "not of this world," or, if of this world, devoted to leadership, mediation, and charity in the realms which do not belong to Caesar.

Theoretically, of course, it is quite conceivable that capitalism could flourish without a legal framework, either under pure anarchism, or under a beneficent landlordism, or with the blessings of a "let alone" monarch. But, as we shall see, it was James Madison, the scholar among the Founding Fathers, who put his finger unerringly on the need for a device which will put automatic checks on government if any freedoms are to flourish. Purely as a practical matter the institutions of an open society demand the safeguards of a limited government.

JOHN CHAMBERLAIN, *The Roots of Capitalism*

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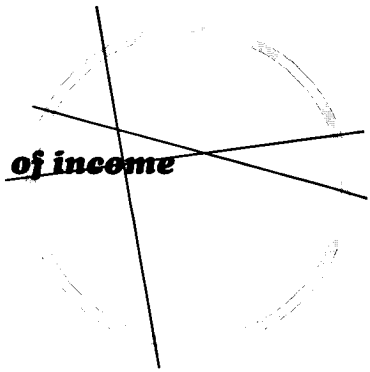

The distribution of income

HENRY HAZLITT

FOR MORE than a century socialist writers have leveled two main charges against capitalism: 1. It is not productive (or only wastefully productive, or far less productive than some imaginable socialist system would be). 2. It leads to a flagrantly unjust "distribution" of the wealth that it does produce; the workers are systematically exploited; "the rich get richer and the poor get poorer."

Let us consider these charges. That the capitalist system could ever have been accused of being unproductive, or of being very inefficiently productive, will seem incredible to most economic students of the present day, familiar with the record of the last generation. It will seem even more incredible to those familiar with the record since the middle of the eighteenth century. Yet the improvement in that early period remained hidden even from some astute contemporary observers. Thomas Malthus in 1798 (the date of the first edition of his *Essay on Population*) seemed hardly aware of the productive transformation already achieved in the first half of the Industrial Revolution.[1]

Yet much earlier, in 1776, Adam Smith had shown keen awareness of improvement: "The uniform, constant, and uninterrupted effort of every man to better his condition . . . is frequently powerful enough to maintain the natural progress of things toward im-

Henry Hazlitt is well known to FREEMAN readers as author, columnist, editor, lecturer, and practitioner of freedom. This article will appear as a chapter in a forthcoming book, *The Conquest of Poverty*, to be published by Arlington House.

1 See "The Problem of Poverty" in THE FREEMAN, June, 1971. pp. 325-6.

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provement, in spite of the extravagance of government, and of the greatest errors of administration."[2]

Smith rightly attributed this progress to the steady increase of capital brought about by private saving — to the "addition and improvement to those machines and instruments which facilitate and abridge labor."

"To form a right judgment" of this progress, he continued, "one must compare the state of the country at periods somewhat distant from one another. [So as not to be deceived by short periods of recession.] . . . The annual produce of the land and labor of England, for example, is certainly much greater than it was a little more than a century ago at the restoration of Charles II." And this again was certainly much greater "than we can suppose it to have been about a hundred years before, at the accession of Elizabeth." Quite early in *The Wealth of Nations* we find Smith referring to the conditions of his own period as being comparatively, as a result of the increasing division of labor, a period of "universal opulence which extends itself to the lowest ranks of the people."[3]

[2] *The Wealth of Nations*, Book II, Ch. III.

[3] Book I, Ch. I.

If we leap ahead another century, we find the economist Alfred Marshall writing in the 1890's:

"The hope that poverty and ignorance may gradually be extinguished, derives indeed much support from the steady progress of the working classes during the nineteenth century. The steam-engine has relieved them of much exhausting and degrading toil; wages have risen; education has been improved and become more general. . . . A great part of the artisans have ceased to belong to the 'lower classes' in the sense in which the term was originally used; and some of them lead a more refined and noble life than did the majority of the upper classes even a century ago."[4]

Statistical Comparisons

For more recent years we have the great advantage of getting beyond more or less impressionistic comparisons of economic progress to fairly reliable statistical comparisons. Our chief care here must be to avoid making such comparisons in terms of dollar income at current prices. Because of the continuous monetary inflation in the United States since the 1930's, this would give a very misleading impression. To get a true picture of the real improvement in pro-

[4] *Principles of Economics*, Eighth edition, pp. 3-4.

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duction and welfare, in so far as these are measurable, allowance must be made for price increases. Statisticians do this by deflating recent prices and incomes in accordance with index numbers of average prices – in other words, by making their comparisons in terms of so-called "constant" dollars.

Let us begin with some over-all figures. In the 59 years between 1910 and 1969 it is estimated that the real gross national product of the United States (the GNP) increased at an average rate of 3.1 per cent a year compounded.[5] At such a rate the production of the country has been more than doubling every 24 years.

Let us see how this has looked expressed in billions of 1958 dollars:

Year	GNP
1929	$203.6
1939	209.4
1949	324.1
1959	475.9
1969	727.1

Source: Department of Commerce.

In the ten years from 1939 to 1949, then, the real gross national product of the country increased 55 per cent; in the twenty years from 1939 to 1959 it increased 127 per cent; in the thirty years from 1939 to 1969 it increased 242 per cent.

If we now express this in terms of disposable per capita personal income (at 1958 prices) for these same years, the comparison is less striking because we are allowing for the growth in population, but the progress is still remarkable:

Year	Per capita income
1929	$1,236
1939	1,190
1949	1,547
1959	1,881
1969	2,517

Source: Department of Commerce.

In other words, disposable per capita personal income at constant prices increased 112 per cent – or more than doubled – in the generation from 1939 to 1969.

This disposes effectively of the charge that capitalism is unproductive, or unacceptably slow in increasing production. In the thirty years from 1939 to 1969 the United States was still the most capitalistic country in the world; and the world had never before witnessed anything comparable with this vast production of the necessities and amenities of life.

Which Groups Gain Most?

The foregoing figures do nothing, it is true, to answer the charge that capitalism distributes

[5] Based on estimates by the Department of Commerce expressed in "constant" (1958) dollars.

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its gains unjustly – that it benefits only the already rich, and leaves the poor, at best, no better off than they were before. These charges are at least partly answered, however, as soon as we compare the *median* incomes of families in constant (1969) prices:

Year	Families (millions)	Median Income
1949	39.3	$4,779
1959	45.1	6,808
1969	51.2	9,433

Source: Department of Commerce.

As the *median* income means that there were just as many families earning more than the amount cited as those earning less, it follows that the 97 per cent increase of median real incomes in this twenty-year period must have been shared in by the mass of the people.

Other sets of figures confirm this conclusion. If we compare weekly wages paid in manufacturing, we find that these rose from $23.64 in 1939 to $129.51 in 1969 – an increase of 448 per cent. As the cost of living was constantly rising during this period, this of course greatly exaggerates labor's gains. Yet even after we restate these wages in terms of constant (1967) prices, we find the following changes in average gross weekly earnings:

Year	Wages (in 1967 prices)
1939	$56.83
1949	75.46
1959	101.10
1969	117.95

Source: Department of Labor.

So, far from wages failing to keep pace with increases in living costs, real wages rose 108 per cent in this thirty-year period.

Was the worker getting his "fair share," however, in the general increase in production – or was he getting a smaller share compared with, say, the owners of industry?

Dividing the Pie

Let us begin by looking at the sources of personal income. Of the nation's total personal income of $801 billion in 1970, $570.5 billion, or 71 per cent, was in wages and salaries and other labor income. Income from farming came to $16.2 billion, or 2 per cent; business and professional income was $51.4 billion, or 6.4 per cent. Rental income received by persons was $22.7 billion, or 2.8 per cent; dividends came to $25.2 billion, or 3.1 per cent; interest received by persons was $65.2 billion, or 8.1 per cent. (Source: *Economic Indictators*, June, 1971, Council of Economic Advisers.) If we total these last three items we get

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$113.1 billion, or 14.1 per cent, of "unearned" income. (The income from farming and from business was partly "earned" and partly "unearned," in undeterminable proportions.)

It is doubtful how much all this tells us about the distribution of income between the "rich" and the "poor." Total wage and salary disbursements include the salaries of high-paid executives and of television and motion-picture stars. On the other hand, rentals, dividends, and interest payments include many millions of moderate-sized individual sums that may represent the major part or the sole means of support of widows and orphans and persons too old or too ill to work. (There are some 30 million American stockholders, for example, and 25 million savings-bank accounts.)

A very significant figure, however, is the comparison of how much the employees get from the corporations with how much the owners get. Let us look first at a few facts about profits. In the five-year period 1965 to 1969 inclusive, all manufacturing corporations of the United States earned profits after Federal income taxes of only 5.2 cents per dollar of sales. Manufacturing corporation profits after taxes as a percentage of stockholders' equity look a little better – they averaged 12.3 per cent for the same five years. (Source: *Economic Report of the President*, February, 1971, p. 284.)

Both of these figures, however, overstate the real profits of the corporations. In a period of continuous inflation like the present, the corporations are forced by the tax laws to make inadequate deductions for depreciation of plant and equipment, based on original cost, and not sufficient to cover replacement costs. Profits as a percentage of equity are overstated for still another reason: they are stated in dollars of depreciated purchasing power compared with the dollars that were originally invested.

Lion's Share to Employees

What is more significant (and constantly forgotten) is that the employees of the corporations draw far more from them than the owners. This is exactly the opposite of what is commonly believed. Surveys by the Opinion Research Corporation have found that the median opinion of those polled was that the employees of American corporations receive only 25 cents out of each dollar available for division between the employees and the owners, and that the remaining 75 cents goes to profits. The facts are quite the opposite. In 1970, for example, of the U. S. corporation income avail-

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able for distribution between the workers and the owners, nine-tenths went to the workers and only one-tenth to the owners. Here is how, in billions of dollars, the division appeared over a series of years:

DIVISION OF U.S. CORPORATE INCOME BETWEEN EMPLOYEES AND STOCKHOLDERS

Year	Profits After Tax	Payrolls	% for Payroll
1970	$36.4	$366.0	91.0
1969	40.0	350.5	89.8
1968	44.2	319.2	87.8
1967	43.0	291.8	87.2
1966	46.7	275.5	85.5
1960	24.8	188.8	88.4
1955	25.4	144.6	85.1

Derived from Office of Business Economics, U.S. Department of Commerce.

If we average out the five years from 1966 to 1970, we find that compensation to employees came to 88.2 per cent of the corporation income available for division, and only 11.8 per cent, or less than an eighth, went to profits available for share owners.

So if American workers are being "exploited" by the capitalists, it is certainly not evident from the figures. One important fact that the anticapitalist mentality so often forgets is that corporation earnings do not constitute a common pool. If manufacturing corporations earn an average of 12 per cent on their equity, it does not mean that every corporation earns this average profit margin. Some will earn 20 per cent on equity, some 10 per cent, some 3 per cent – and many will suffer losses. (Over a 40-year period an average of 45 per cent of companies – by number – reported losses annually. As a general rule, small companies suffered losses more frequently than did the large corporations.)

Another point to be kept in mind: When profits are large, it does not mean that they are at the expense of the workers. The opposite is more likely to be true. In 1932 and 1933, for example, the two years when the nation's corporations as a whole showed a net loss, the workers also suffered their worst years from unemployment and wage cuts. In a competitive capitalistic economy, aggregate profits and aggregate wages tend to go up or down together. It is to the long-run interest of the workers as well as of stockholders for profits to be high.

A Look at Family Incomes

Turning from the sources of income, we come now to increases in family incomes over recent years and to the division of income as between various segments of the population. Because of rising prices, comparisons between different years of family incomes in current dollars have little meaning. Here is a comparison, how-

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ever, of the per cent distribution of white families by income level, in constant (1968) dollars, between 1950 and 1968:

Family Income	1950	1968
Under $3,000	23.4%	8.9%
$3,000-$4,999	26.8	11.0
$5,000-$6,999	22.9	14.3
$7,000-$9,999	16.6	24.0
$10,000-$14,999	10.2	26.1
$15,000 and over		15.7
Median income	$4,985	$8,936

Source: U. S. Department of Commerce, Bureau of the Census.

The sharp drop in the percentage of families with "constant" incomes under $3,000 is especially noteworthy. The rise in the overall "real" median income in this eighteen-year period was 79 per cent.

The per cent of aggregate income received by each fifth of the number of families in the country, and the per cent of aggregate income received by the top 5 per cent of families, has changed much less over the years, but such change as has occurred has been toward a more equal distribution:

Families	1947	1960	1968
Lowest fifth	5.0%	4.9%	5.7%
Second fifth	11.8	12.0	12.4
Middle fifth	17.0	17.6	17.7
Fourth fifth	23.1	23.6	23.7
Highest fifth	43.0	42.0	40.6
Top 5 per cent	17.2	16.8	14.0

Source: U. S. Department of Commerce, Bureau of the Census.

If the reader wishes to know how the various fifths of the population ranged in actual incomes in 1968, and in which fifth or bracket his own family income fell, he can learn it from the following table:

Families	Income Range	% of Income Received
Lowest fifth	Under $4,600	5.7
Second fifth	$4,600-$7,400	12.4
Middle fifth	$7,400-$10,000	17.7
Fourth fifth	$10,000-$13,500	23.7
Highest fifth	$13,500 and over	40.6
Top 5 per cent	$23,000 and over	14.0
Top 1 per cent	$42,500 and over	5.0

Derived from Herman P. Miller, *Rich Man, Poor Man* (Crowell, 1971.) p. 15.

How Government Intervention Affects Each Group

A study published on March 18, 1971 by two Census Bureau statisticians, Herman P. Miller, director of the Census Bureau's population studies, and Roger A. Herriot, concluded that the processes of government now shift income from rich to poor with substantially greater effect than is commonly believed. They contended that most families pay direct and indirect taxes at about the same rate – 30 per cent – regardless of income level; but that when payments from government (such as unemployment insurance) are taken into account, the result is a

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markedly progressive redistribution of income. For example, families with earned income of less than $2,000 a year in 1968, according to the study, paid an estimated 50 per cent of their income for all taxes – but got back 106.5 per cent in government payments. So their "net" tax was not a tax at all, but a benefit of 57 per cent. Families with over $50,000 a year, meanwhile, paid 45 per cent in total taxes and got back less than 1 per cent. So their net tax was 44.7 per cent of income.[6]

The income comparisons here presented fail to give any support whatever to the socialist contention that under a capitalist system the tendency is for the rich to get richer and for the poor to get poorer – or at any rate for the proportional "gap" between the rich and poor to increase. What the figures show, on the contrary, is that in a healthy, expanding capitalist economy the tendency is for both the rich and the poor to get richer more or less proportionately. If anything, the position of the poor tends to improve better than proportionately.

This becomes even clearer if, instead of merely comparing incomes in terms of dollars, we look at the comparative gains of the poor that have been brought about by the technological progress that has in turn to so large an extent been brought about by capitalism and capital accumulation. As Herman P. Miller has pointed out:

"Looking back, there is good reason to wonder why the 1920's were ever regarded as a golden age. . . . Take for example a simple matter like electric power. Today electricity in the home is taken for granted as a more or less inalienable right of every American. Practically every home – on the farm as well as in the city – is electrified. Even on southern farms, ninety-eight out of every hundred homes have electricity. In 1930, nine out of every ten farm homes were without this 'necessity.' And the country was much more rural than it is now.

"A more striking example is provided by the presence of a toilet in the home. . . . As recently as 1940, about 10 per cent of city homes and 90 per cent of farms lacked toilet facilities within the structure. This is not Russia or China that is being described, but these United States only thirty years ago."[7]

Even the skeptical Paul Samuelson conceded in 1961 that "the

[6] The estimate that families with earned incomes of less than $2,000 a year paid a total in taxes of 50 per cent of their income seems on its face extremely high, but I cite the conclusions of the study as given.

[7] *Rich Man, Poor Man* (New York: Thomas Y. Crowell Co., 1971), pp. 44-45.

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American income pyramid is becoming less unequal."[8]

Technological Progress

There can be little doubt that the technological progress of the last two generations has meant more to the families at the bottom of this pyramid than to those at the top. It is the overwhelming majority of Americans that now enjoy the advantages of running water, central heating, telephones, automobiles, refrigerators, washing machines, phonographs, radios, television sets – amenities that millionaires and kings did not enjoy a few generations ago.

Here are some of the figures of the percentage of American households owning cars and appliances in 1969:

	ANNUAL INCOME GROUPS		
	All Households	Under $3,000	$3,000-$3,999
One or more cars	79.6%	44.7%	67.0%
TV, B&W	79.0	77.5	83.5
TV, Color	31.9	9.5	16.9
Washing machine	70.0	49.8	60.9
Refrig. or freezer	82.6	75.0	76.8

Source: U. S. Department of Commerce, Bureau of the Census.

In view of the fact that government statisticians officially placed the "poverty threshold" for 1969 at $3,721 for a family of four, and $4,386 for a family of five, the percentage of families with incomes less than this who own cars and appliances is remarkable. In 1969, in addition, 90 per cent of all American households had telephone service.

To these figures on the distribution of physical appliances we must add many intangibles. The most important of these is the enormous increase in the number of those who have enjoyed the advantage of an education. Broadly speaking, the percentage increase has been greatest for those at the bottom of the pyramid. A century ago (1870), only 57 per cent of all children between 5 and 17 years of age attended school. By the turn of the century this had risen to 76 per cent, by 1920 to 82 per cent, and by 1960 to 89 per cent. It was as low as this in 1960 only because children were starting school at 6 years of age instead of at 5. Nearly 97 per cent of all children between 7 and 17 years of age were in school in 1960. Even more dramatic are the figures on schooling at a higher level. In 1870, only 2 per cent of the relevant age group graduated from high school. This tripled to 6 per cent by 1900, tripled again to 17 per cent by 1920, and again to 50 per cent by 1940. It had reached 62 per cent by 1956. Enrollment in institutions of higher

[8] *Economics: An Introductory Analysis*, 5th edition (New York: McGraw Hill Book Co.), p. 114.

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education – junior colleges, colleges, and universities – was less than 2 per cent of the relevant age group in 1870, and more than 30 per cent in 1960.[9]

Serving the Masses

The long-run historical tendency of capitalism has been to benefit the masses even more than the rich. Before the Industrial Revolution the prevailing trades catered almost exclusively to the wants of the well-to-do. But mass production could only succeed by catering to the needs of the masses. And this could be done only by dramatically reducing the costs and prices of goods to bring them within the buying power of the masses. So modern capitalism benefited the masses in a double way – both by greatly increasing the wages of the masses of workers and greatly reducing the real prices they had to pay for what was produced.

Under the feudal system, and nearly everywhere before the Industrial Revolution, a man's economic position was largely determined by the economic position of his parents. To what extent is this true in the United States of the present day? This is a difficult question to answer in quantitative terms, because one of the intangibles a man tends to "inherit" from his parents is his educational level, which so largely influences his adult earning power. But some of the partial answers we do have to this question are surprising. Herman P. Miller tells us:

"In 1968 fewer than one family out of a hundred in the top income group lived entirely on unearned income—interest, dividends, rents, royalties, and the like. The other ninety-nine did paid work or were self-employed in a business or profession. Nearly all of these families were headed by a man who worked at a full-time job. In 1968 over four-fifths of these men worked full time throughout the year."[10]

They also seemed to work longer hours than the average worker. Among the rich, also, "relatively few admit to having inherited a substantial proportion of their assets. Even among the very rich – those with assets of $500,000 or more—only one-third reported that they had inherited a substantial proportion of their assets; 39 per cent claimed to have made it entirely on their own, and an additional 24 per cent admitted to having inherited a small proportion of their assets."[11]

[9] Author's source: Rose D. Friedman, *Poverty: Definition and Perspective* (Washington: American Enterprise Institute, 1965), p. 11.

[10] *Rich Man, Poor Man*, p. 150.

[11] *Ibid.* p. 157.

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International Comparisons

I have said nothing so far of the comparison of American incomes with those of other nations. In absolute figures – in gross national product per capita, in ownership of passenger cars and TV sets, in use of telephones, in working time required to buy a meal – these comparisons have been all heavily in favor of the United States. In 1968, the per capita gross national product of the country came to $4,379, compared with $3,315 in Sweden, $2,997 in Canada, $2,537 in France, $1,861 in the United Kingdom, $1,418 in Italy, $1,404 in Japan, $566 in Mexico, and $80 in India.[12]

More immediately relevant to our subject is a comparison of the distribution of income in the United States with that in other countries. In this respect also the result has been largely in favor of the United States. A comparison of conditions in the 1950's made by Simon Kuznets found that the top 5 per cent of families received 20 per cent of the U. S. national income. Industrialized countries like Sweden, Denmark, and Great Britain showed approximately the same percentage. It was in the "underdeveloped" countries where the greatest internal disparities existed in incomes. For example, in El Salvador the top 5 per cent of families received 36 per cent of the national income, in Mexico 37 per cent, in Colombia 42 per cent. This comparison is one more evidence that capitalism and industrialization tend to reduce inequalities of income.

I have entitled this article "The Distribution of Income," and have been using that phrase throughout; but I have done so with reluctance. The phrase is misleading. It implies to many people that income is first produced, and *then* "distributed" – according to some arbitrary and probably unjust arrangement.

A Misleading Phrase

Something like this idea appears to have been in the back of the minds of the older economists who first began to arrange their textbooks under these headings. Thus, Book I of John Stuart Mill's *Principles of Political Economy* (1848) is entitled "Production," and Book II, "Distribution." Mill wrote, at the beginning of this second book:

"The principles which have been set forth in the first part of this Treatise are, in certain respects, strongly distinguished from those on the consideration of which we are now about to enter. The laws and conditions of the production of wealth partake of the character

[12] *Statistical Abstract of the United States*, 1970, p. 810.

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of physical truths. There is nothing optional or arbitrary in them. . . .

"It is not so with the Distribution of Wealth. That is a matter of human institution solely. The things once there, mankind, individually or collectively, can do with them as they like. . . . The distribution of wealth, therefore, depends on the laws and customs of society."

This distinction, if not altogether false, is greatly overstated. Production in a great society could not take place—on the farms, in the extraction of raw materials, in the many stages of processing into finished goods, in transportation, marketing, saving, capital accumulation, guidance by price and cost and supply and demand—without the existence of security, law and order, and recognized property rights—the same rules and laws that enable each to keep the fruits of his labor or enterprise. Goods come on the market as the property of those who produced them. They are not first produced and then distributed, as they would be in some imagined socialist society. The "things" are not "once there." The period of production is never completed, to be followed by some separate period of distribution. At any given moment production is in all stages. In the automobile industry, for example, some material is being mined, some exists in the form of raw materials, some in finished or semifinished parts; some cars are going through the assembly line, some are on the factory lots awaiting shipment, some are in transport, some are in dealers' hands, some are being driven off by the ultimate buyers; most are in use, in various stages of depreciation and wear and need of replacement.

Everyone Gains

In brief, production, distribution, and consumption all go on continuously and concurrently. What is produced, and how much of it, and by what method, and by whom, depends at all times on the relative sums that those engaged in the process are receiving or expect to receive in profits or wages or other compensation. Production depends no less than distribution on "the laws and customs of society." If farmer Smith raises 100 bushels of potatoes and farmer Jones 200 bushels, and both sell them for the same price per bushel, Jones does not have twice as much income as Smith because it has been "distributed" to him. Each has got the market value of what he produced.

It would be better to speak of the *variation* between individual incomes than of their "distribution." I have used the latter term

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only because it is customary and therefore more readily understood. But it can be, to repeat, seriously misleading. It tends to lead to the prevalent idea that the solution to the problem of poverty consists in finding how to expropriate part of the income of those who have earned "more than they need" in order to "distribute" it to those who have not earned enough. The real solution to the problem of poverty, on the contrary, consists in finding how to increase the employment and earning power of the poor.

Next Month: The Story of Negro Gains

IDEAS ON LIBERTY

The Civilizing Process

AT THIS STAGE in history even the most highly civilized among us wear only a thin veneer of civilization. This can be tested easily by trying to take from our civilized fellow man something that he values highly. It is likely that his thin veneer of civilization will become even thinner. Could we not then all agree that the object of the game is, as we live, to try to contribute to, not take away from, the civilizing process?

Here in America, for reasons known to most, but apparently not all of us, men have developed a political and economic system that works better than any other in history. It works, functions, better because it affords the opportunity for each man to rise as high as ability, talent, training and energy can take him. Every American, if he tries, can do better in the world than his father did before him, because the opportunities in America are constantly increasing and expanding.

This freedom to rise, multiplied by the countless millions of Americans who have used it, has built (and continues to build) the economic miracle of history, a nation with the most stable institutions in history.

It should be unnecessary to say that all Americans, black and white, have far more to gain by using and being a part of the system than by pulling and working against it.

FRANK WALLACE, from the pamphlet, "To Insure Domestic Tranquility," copyright 1971.

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ROBERT G. BEARCE

ESCAPING THE MOB MENTALITY

IN correspondence dated 1789, Thomas Jefferson observed, "I am not a federalist, because I never submitted the whole system of my opinions to the creed of any party of men whatever in religion, in philosophy, in politics or in anything else, where I was capable of thinking for myself. Such an addiction, is the last degradation of a free and moral agent. If I could not go to heaven but with a party, I would not go there at all."[1] The general thrust of Jefferson's personal creed here is *individualism* – personal independence in thought and action as opposed to the inevitable corruption of a collective creed.

Mob Mentality – the collective complex – is what Jefferson was protesting. This creeping contagion lurks today in the heart of many an individual – yes, even that individual who espouses personal freedom and responsibility over state paternalism. This affliction is not always easily recognized or diagnosed, but certain symptoms can be isolated: attitudes of gloom and impotence, pessimism, and a mania for organizing. Each individual must be his own physician – through self-examination – if the disease is to be eradicated and the devotees of personal freedom and individual accountability are to nurture the freedom faith.

Many a person is deeply disturbed that his country appears to be sinking ever further into the mire of socialism, but he rationalizes that his own individual action is dependent upon the accompanying action of others. He forgets that a man is solely responsible for his own, not the actions and attitudes of other men. To the extent that he surrenders responsibility for individual initiative, to that extent he enslaves himself to Mob Mentality. Whenever a personal endeavor challenges him to live the freedom faith, he para-

[1] "Personal Faith," in *Thomas Jefferson on Democracy*, edited by Saul K. Padover (D. Appleton-Century Co., 1939), p. 122.

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lyzes himself with a weak: "There's no hope. The hour is too late for a revival of freedom. Freedom is dying." He groans that everyone is too saturated with myths and fallacies to pay any attention to his vast store of wisdom. "I'm a lone wolf in a desert of ignorance. Nobody'll listen."

That last remark is his downfall. His potential for individual action is smothered by Mob Mentality. Maybe his fellow man won't appreciate his efforts for freedom, but that isn't a burden he must bear. If his understanding of freedom is constructed upon *serious reflection, sincerity, humility,* and *honesty,* then he should be content to allow the Truth of freedom to fight its own battles against apathy and ignorance. *His* initial effort – not the collective's approbation or lack of it – ought to be his chief preoccupation.

Another common symptom of the Mob Mentality is a fondness for "organizing" and organizations. It must be acknowledged, of course, that the organizing spirit has its place in the defense of freedom. Individuals can develop new friendships through club work. Often five people working in conjunction can accomplish more than the individual alone. Organizations enable profound discussions to be held, thus deepening each member's insight into common goals. Material and information can be propagated through clubs and organizations. Efforts can be coordinated and strengthened.

The organizing spirit per se is not to be condemned, but each individual who adds his name to a club's membership roll should keep this maxim ever in mind: *Eternal vigilance is the price of liberty!* For, within the spirit of organizing lurks the threat of Mob Mentality.

Membership in the organization creates an obsession for labels that can nearly paralyze one's efforts for freedom. Why, he is a member of the Righteous Order of Patriots – with a national membership of 43,281!

Unfortunately, not every one of those thousands will have been a credit to the organization. The criticism of those deviates by outsiders might indeed be unjust, vile, and slanderous; but each member should ask himself just how much he gains, or loses, by stubbornly adhering to the respective label of his own particular group . . . especially when such an obsession causes outsiders to pigeonhole him along with the black sheep of the group. He should ask himself whether his position on freedom will be judged for its inherent worth or whether it will be smothered under abuse of the

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label. Such is the challenge to be faced by individuals of various freedom sects today: "Conservatives," "Libertarians," "Objectivists," "Classical Liberals," and so on.

An acceptance of proven truths – propagated by the "organization" – should never become an absolute substitute for individual inquiry. It is one thing to possess a humility willing to accept the hard-earned wisdom of others . . . but something else entirely to allow that wisdom to discourage one's own ventures into the unknown. Thus, organizational membership has a tendency to absorb the individual, diluting his own creativity and ingenuity.

If each individual practices "eternal vigilance" and protects his identity against Mob Mentality, then his organization or association with other free men will indeed prosper. Each member will contribute his individual talents, wisdom, and energies. If "eternal vigilance" is not the watchword, each individual will be reduced to the lowest common denominator as legalism, tradition, and obedience become the club chant.

Mob Mentality sometimes reaps its victims in greatest number at the level of Political Parties. Here the individual must forsake integrity, honesty, and the right to be himself . . . that is, unless he is a real stalwart and practitioner of "eternal vigilance." Always hovering above the individual who ventures into the dangerous waters of political party officialdom is the admonition that he is no longer an individual. Wherever men sacrifice personal conviction for the collective creed, there you will find the germs of Mob Mentality gleefully destroying the individual . . . even under the slogans of "the people's will," "democracy," and "for the good of society."

Today, the advocates of freedom and the free market remain on the defensive, mainly because they are preoccupied with the extending tide of socialism, collectivism, and statism. Although our efforts for freedom should be directed at countering these forces, so too should we devote more of our energies to self-examination, lest we find ourselves debilitated by Mob Mentality.

The commission of free men today is to sow the good seed of truth, not glancing over the shoulder at the mass flight of humanity toward the pit of apathy and collectivism. Freedom will fight its own battles and free men will reap the blessings of freedom only so long as the individual devotees of freedom are willing to declare along with Luther: *"Here I stand . . . I can do no other."*

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CLARENCE B. CARSON

THE FOUNDING OF THE AMERICAN REPUBLIC

3

The Colonial Religious Experience

THE ENGLISH HERITAGE was modified and transfigured by colonists out of nearly 170 years of experience. It is frequently asserted that the United States is a young nation, as such things go, and the people are sometimes described as being in their youth. Such notions, if taken to mean that Americans are short on experience, will not hold up on examination. Americans have had not only the experience of the human race before them – such of it as they carried with them as furniture in their minds or recalled in the literature with which they were familiar – but also a broader and more cosmopolitan experience than a homogeneous people who have remained in their homeland. Moreover, they had a long colonial experience which was quite varied since the colonies grew up distinct from one another. The two facets of that experience to have most direct bearing on the founding of the United States were the religious and the political.

The religious background and experience will be taken up first because it is most basic. A reading of the United States Constitution, however, could easily mislead anyone as to the religious disposition

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of the Founders. There is nowhere in it even a mention of God. The only direct references to religion are those prohibiting the establishment of religion and prohibiting religious tests for office – both negative in character. In addition, a case could be made that several of the leaders among the Founders were Deists – that is, held only such residues of religious beliefs as they could square with human reason. One historian notes the importance of religion in the coming of the revolt in this way: "Yet if we realize that the eighteenth century, for all its enlightened rationalism, remained an age of faith, the religious background of the Revolution becomes instructive. This is not to say, of course, that religious grievances or religious ideology *caused* the Revolution. . . . But the subterranean forces which motivate political behavior can be found within the more general atmosphere of the times. On the eve of the Revolution, the Protestant religion constituted a fundamental aspect of American culture."[1] To which needs to be added that the religious framework not only underlay the move for independence but undergirded the way it was done, the statements of the day, the constitutions that were drawn, and the Republic that was founded. How fundamental religion was to them can be made clearer by examining a little into the background.

It is widely held that the American Revolution was not very revolutionary – a view to which this writer subscribes –, that in comparison with the French Revolution, the Bolshevik Revolution, or even the Puritan Revolution in England in the seventeenth century, the American one was not nearly so radical or was basically conservative. What contributed to this, as already indicated, was a considerable reliance on the English heritage, as well as a general dependence on experience and experienced men. But there was something else which made Americans shy about radical experiments in social reconstruction. It has not been put this way before, I think, and a new thesis deserves more extensive treatment, but it is very germane to this background.

Let it be stated baldly, then. Americans had already had their try at revolution before they came to break with England. Now I do not mean what Clinton Rossiter meant when he referred to *The First American Revolution*.[2] His

[1] Peter N. Carroll, ed., *Religion and the Coming of the American Revolution* (Waltham, Mass.: Ginn-Blaisdell, 1970), p. xi.

[2] This is the title of a paperback version of the first part of his book, *Seedtime of the Republic*.

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meaning was that a revolution in outlook in the decades before 1776 preceded the declaring of independence. What I mean is that when some of the colonists left England and arrived in America they attempted a revolutionary reconstruction of the social and political order. This could be conceived as a revolution only by contrasting what they attempted to do in America with the order that prevailed in the land from which they came. Ordinarily, historians think of a revolution in terms of a prior situation in some country in contrast with what was done in that same country. This may account for their not perceiving the revolutionary content of the changes between England and America during the earlier colonial period. Be that as it may, there were some rather drastic experiments attempted in America in several colonies. They failed, by and large, and their failure meant that the bulk of Americans were not inclined toward radical reconstruction when they broke with England.

The Frontier Thesis

What has impressed many historians in more recent times has been the impact of the physical environment of America on settlers from Europe. The thesis regarding this impact is known as the frontier thesis. The frontier thesis was first most persuasively presented by Frederick Jackson Turner in the 1890's. It holds that American culture can be explained largely in terms of a succession of encounters with the moving frontier. Undoubtedly, those who came to the New World had to contend with the physical environment, and, undoubtedly, they developed ways which were different in some respects from those of Europe in dealing with it. (Those who have held to the frontier thesis have meant much more than this, of course, for they have generally been determinists, holding that the environment actually shaped Americans.) Yet many of the early settlers struggled with something much less plastic than the physical environment, and from their unsuccessful wrestling with it must have drawn conclusions which joined them once again to the age-old experience of man. In several of the early communities, those who came wrestled with human nature itself, conceived and elaborated systems which would eventuate in new societies. They were much more impressed with the potentialities of a cultural frontier than of a physical one. What they discovered – perhaps, better, came to accept – was the Old Adam in man which is not exorcised by a new setting. This

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needs to be filled out with some particulars, but first the religious background needs to be covered.

Religious Background

Those Europeans who came to settle in America were preponderantly Christians, nominally, habitually, or devoutly. The few who were not were probably theists and people of the Book, i.e., Jews. They were Christians whose churches and sects were known by such varied names as Baptists, Brownists, Moravians, Quakers, Presbyterians, Congregationalists, and Catholics. Though it was their differences which stood out at the time and over which they wrangled, they nonetheless shared a basic outlook which transcended their differences and evidenced their common heritage.

As Christians, they accepted God as Creator, as Provider, and Disposer. Life was viewed within a dualistic framework of Time and Eternity. Time was that dimension within which man lived out his allotted years; however brief they might be, they were fraught with ultimate significance as the span within which the decision for eternity was made. Christians had, and have, a historical framework implicit in their religion, one which is bounded by time and is marked off by several transcendent events: the Creation, the Fall, the Incarnation, the Second Coming and the Last Judgment. These are the great landmarks of sacred history, past and future. Not everyone who has gone by the name of Christian has felt the impact of their deeper meaning, yet to be Christian has meant, to say the least, the acceptance of the Incarnation as the entering of God more directly into history through Jesus Christ, the providing of a way of salvation through His grace, and the setting in motion of events which will culminate with His return. To be a Christian has ever meant, too, that man does not give meaning to his life; instead, God gives meaning to it.

The Founders of these United States would have rejected out of hand any suggestion that they write any such credo into the Constitution. Yet their rejection of it would not have signified in most cases that they rejected the beliefs involved. Indeed, they conceived themselves to be doing something much less than and different from pronouncing upon theological questions: they were erecting a frame of government. The kind of government they erected, however, was undergirded and informed by theistic and Christian concepts. It was a government which did not have as its object the salvation of man, the bringing of Heaven to earth, or anything of the sort.

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These things could well be left to their own realm and men could be left free regarding them because they were in the domain and hands of God. Men without such a faith can leave no area of freedom, for to be free without God is a chaos of wills.

The Protestant Reformation

Most of those who came to America from Europe in the first two centuries of settlement along the East coast were Protestants. To speak of a Protestant faith or doctrine is to speak loosely, for Protestants have their doctrines and beliefs within particular churches and sects, and these differ greatly from one another. Yet, here again there is a common bond, acknowledged by the very use of the term, Protestant, and it goes beyond opposition to the Roman Catholic Church, though it is usually defined in contrast with that body.

The seventeenth century settlement of America occurred while the tides from the Protestant Reformation were still flowing strongly. The religious wars, spawned by the Reformation and Counter-Reformation, took place in the midst of the seventeenth century. Doctrines were still picking up adherents; there was a great vitality to religious matters, and many men were deeply concerned about correct belief. This is to say that at the time of the early settlements there was profound interest in and concern about religion. Several currents of ideas were sweeping toward their crests. This was true of those called Puritans as well as a host of sectarians.

One thing that Protestants generally shared was an emphasis on the Bible as the sole source of their beliefs. This was in contrast with the Roman Catholic Church which used in addition to the Bible such other sources as church tradition and the writings of the Church Fathers. Undoubtedly, Protestants subsumed much of this tradition into their versions of Christianity. The Anglican Church kept a goodly amount of the older tradition. But Protestants in general insisted upon a biblical foundation for their beliefs. This central role of the Bible provided a major underlying support to the idea of having a written constitution. By analogy, the English constitution was like the Roman Catholic Church in relying mainly on tradition; the United States Constitution is Protestant-like in being the written word.

Another most important difference between Protestants and Catholics was in the position toward monasticism. In the Catholic Church, a person with a re-

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ligious vocation went into one of the religious orders: if he was a man, he became a member of the secular clergy – those who served in such capacities as pastors and priests to the laity – or the regular clergy – those living under rules as *monks*; if a woman, she became a nun. Protestants renounced, denounced, and, where they could, abolished monasticism. Though Anglicans differed from other Protestants in many respects, on this issue they were agreed. Renouncing the world, to Protestants, was a renouncing of the duties and responsibilities God had placed on men when they were born into it; it was a retreat from the necessary engagement with the Adversary who tested one's mettle.

The Impact of the Puritan Ethic

To devout Protestants, the things of the world are a snare and a delusion. Yet, we are called to grapple with them, possess them, live out our lives in the midst of them, and keep them in their proper perspectives – as things to be used rather than to be used by them. Out of this subtle and somewhat ambiguous attitude toward life in the world came the Protestant ethic, an ethic frequently referred to as the Puritan ethic but actually one shared by most Protestants, though less tenaciously by Anglicans and Lutherans at times. This ethic involved a particular posture toward the workaday world. It is seen most clearly in the Puritan Doctrine of the Calling. According to this doctrine, God calls to useful employment all those whom He elects to salvation. This calling might be any lawful undertaking which compensated not only the person engaged in it but served others as well. One showed forth the character of his faith by the quality of his work. Though other denominations might be less explicit, the whole Protestant movement was permeated by the drive to perform well by the fact that most religious people were engaged in worldly undertakings rather than withdrawing from them into a life apart.

Personal piety tended to replace for committed Protestants the personal devotions of the religious among Roman Catholics. This is often mistaken for a rigid moral posture toward everything both by observers and undoubtedly by some of the practitioners. Piety, however, is a vesting of all things and all acceptable activities with religious significance, a significance that derives from their impact on the condition of the soul of the person involved with them. Anything that cannot be done to

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the glory of God cannot be rightfully done. Protestants tended to repudiate the specializations of the Catholic Church: special orders of religious people, holy days (Puritans castigated a great variety of Christmas activities as pagan), numerous sacraments, the collection of religious relics, and so on. No day was more holy than any other (except, the critic may observe, the Sabbath, which was the major Protestant concession to specialization, a day set aside for religious devotion, that which, in general, Protestants had downgraded), no work more a calling than any other, no thing more worthy of veneration than another. This was the tendency of the Protestant movement, and the outreaches were experienced in vigorous trade and productive activities, insistence on public and private virtue, and a great deal of fervor going into many undertakings which those who discriminated according to a different ethos would reckon to be of little account. That much of this fervor would be obnoxious and repugnant to those of a different faith should be obvious, though men do not ordinarily concede that differences which do not attract them may derive from a great faith, but anyone who would understand American history must come to grips with this moving vitality which stems from a pious attitude toward the Creation.

Community Experiments

English settlements in America grew up separate from one another, as a rule. These settlements were originally called plantations, came to be known as colonies, and most of them eventually became states within the United States. The separation was owing in part to the accident of the location of grants from the king, in part to the difficulties of land travel in those days, in part to British mercantile policy, and in considerable part to religious differences. Most seventeenth century colonies were conceived of and took shape as religious communities, though those who came to them may have had a variety of motives. That they were conceived as religious communities means that they were to be made up of people of the same faith (with a few notable exceptions) and that religion was believed to be the glue that held them together as well as sometimes that which distinguished them from the others.

There may be, there undoubtedly is, a strong individualistic strain in Christianity. Individuals are saved, not communities nor nations, according to Christian teaching. Protestants were more individualistic than Catholics, at

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least in their insistence upon a direct relationship between God and man, one which neither required nor could use a human intermediary. Moreover, Christianity is a missionary religion, that is, the Gospel is to be preached to all nations and peoples. It is not an exclusive religion as is, say, the Hebrew religion. Therefore, religious community in an exclusive or collective sense would be alien to Christianity or to the main thrust of it. Of course, congregations or communities within organizations universal in their purported extent would not be alien.

The Protestant Reformation eventuated in the breakup of the unity of Western Christendom and in the founding of numerous denominations. The initial direction was the founding of national churches as the religion of the people was dictated by the religion of the prince. These national churches were sometimes distinct from any other, most notably the Church of England, and usually required that all those within the country adhere to them. Religion was probably more deeply entangled with political power than it had been before the Reformation. At any rate, to be able to practice any religion freely, it was necessary almost everywhere to hold political power.

Escape from a State Church

Hardly anyone could conceive of a community or nation existing at the beginning of the seventeenth century which did not have one established religion and did not proscribe all others. After all, religion undergirded all institutions, laws, and other establishments. One might as well speak of a people living together under several different systems of laws as with several different religions, so people generally thought. In such a framework, the freedom to practice one's particular religion entailed the lack of freedom of anyone else to practice his in the same community.

The Protestant Reformation not only spawned national churches but also a great deal of religious questioning and vigorous searches for the one true religion. Once a man had discovered the true religion – or the true doctrines and practices within the Christian religion – he must needs live according to his belief, else his soul would surely be forfeit. America was a land of opportunity in the seventeenth as well as later centuries, a land where converts of the true faith might come and set up communities where their faith could prevail.

It was this character to some of the settlements in America which made their coming and their ac-

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tivities in America a revolution, of sorts. Several religious groups in England revolted, in effect, against the Church of England. The Separatists, of whom the Pilgrims who came to Plymouth were a branch, definitely would not accept worship in the Church of England. The Puritans, when pressed to conform, were in tacit revolt against the established church. Something of the same could be said for the Quakers and a goodly number of members of other sects not only in England but also in other lands. Those who came to America were usually successful in their revolt, in that they were able to practice their religion in the New World.

The Massachusetts Experiment

What was more revolutionary than this was the kind of society some of them tried to set up. The example which comes most readily to mind is that of the Puritans who settled in Massachusetts in large number in the 1630's. These had greater opportunity than did most settlers to innovate because they brought their charter with them and a controlling group of stockholders as well. The Puritans were not utopians, nor were they redistributionists by doctrine. They did, however, conceive of the good society as one ruled by the saints, that is, ruled by the elect. They were Calvinists in derivation, and believed in the doctrine that God has elected some to salvation and the rest to damnation. It is His will, so they thought, that the redeemed, so far as they could be discovered, should rule. And, in their rule, they tried to run the government and order society so as to remove all wrongdoing and leave men free only to do good.

The Puritans established their church in Massachusetts, and branch-offs from it were established in other places in New England, with the notable exception of Rhode Island. The church was supported by taxation, attendance upon its services was required of all inhabitants, and the moral prohibitions enforced by the civil authorities. The Puritans enforced an orthodoxy in public utterance as well as in moral behavior. Those who would not conform were banished from the colony. They had not come, they said, to form a debating society.

The Puritans' insistence on orthodoxy may have had political sources, in part. They had a difficult time in justifying the rule of the saints and the prescription of the same regimen for both saved and damned. Since all of their theologians could agree that a moral life could in no wise attain salvation for one, it was not at all clear why the saints should con-

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cern themselves with church attendance and what are ordinarily referred to as the private morals of the unredeemed. The Massachusetts Puritans had a dogma to fill this apparent vacuum; it was known as "preparation for salvation."[3] This was the doctrine that one could be prepared for the receiving of grace for salvation by hearing sermons, attending church, and good conduct. This justified, in their minds, the use of force or power in religious matters; it provided an ultimate sanction to the mundane business of intertwining church and state.

The Puritan experiment failed; everyone seems to agree on this point. Their preachers never tired of telling their congregations that they had fallen away from the zeal of their fathers. Their small farming towns founded on an abstraction of the manor failed to contain a population, much of which turned to the sea for a livelihood. A Half-way Covenant in the latter part of the seventeenth century admitted the children of the "saints" to church membership and political participation without requiring of them all the signs of election. The charter was revoked in the 1680's. The witchcraft persecutions of the 1690's made many doubt the validity of theocracy. The Congregational church was not finally and fully disestablished in Massachusetts until the 1830's, but the theocratic concept of a Holy Commonwealth had long been abandoned. There were, of course, powerful residues from it. The covenant idea went into a stream of ideas which supported a written constitution as a pact between the governors and the governed. The idea of reconstructing society for the good of all has not died, either; it has gone through many mutations in American history. But many New Englanders had enough of such drastic experiments by the eighteenth century.

Communal Failures

There is not space here to discuss in any detail the many different community experiments of the colonial period; it would take a good sized book to do so. There were experiments in communal storehouses and disposal of land. The earliest of these was at Jamestown; it was such a dismal failure that it was very shortly abandoned. A similar fate met the Plymouth experiment in the 1620's. This did not deter the founders of Georgia from attempting an even more extensive experiment along these lines in the

[3] See Perry Miller, "'Preparation for Salvation' in Seventeenth-Century New England," *Essays in American Colonial History*, Paul Goodman, ed. (New York: Holt, Rinehart and Winston, 1967), pp. 152-183.

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1730's and 1740's. They attempted to plan the economy and control the morals of the inhabitants: small parcels of land were distributed to householders; an attempt was made to produce silk; they selected the inhabitants according to need and other criteria; and an act of 1735 declared that "no Rum, Brandies, Spirits or Strong Waters" could be imported or sold in the colony.[4] By mid-century just about everyone had had enough of this experiment, including the trustees. Of this experiment in philanthropy, historian Daniel Boorstin notes that "a project which had been lavishly supported by individual charity and public philanthropy, had come to a dismal end. It is uncertain how much of the population had deserted Georgia for the freer opportunities of Carolina and the other colonies by the middle of the century. . . . But many had left, and there was more than romance or malice in the notion that Georgia was on the way to becoming a deserted colony."[5]

The Quaker Colony

These were not strictly religious experiments, but the effort of the Quaker colony of Pennsylvania was more nearly so. The Quakers departed radically from Christian tradition. They abandoned the inherited forms of Christianity, indeed, professed to despise them, eschewed liturgy, theology, or a specialized clergy, believed that each man was illumined by an inner light, and were confirmed pacifists. Also, in the early years, their zeal was almost unbounded, as is illustrated by the determination of some of their number to be martyred in Massachusetts. (The authorities there finally decided to oblige them.) They refused to be sworn in courts or take oaths of office in conventional manner. They believed that if the Indians were treated fairly there would be no trouble with them.

How such a people with such beliefs could govern is difficult to fathom. Government has to do with monopolizing and using force, if it is to be employed at all. Yet here were a people loath to bear arms. Boorstin observes that "almost from the beginning the Quakers realized that their religious doctrines . . . would put difficulties in the way of running a government. It was one thing to live by Quaker principles, quite another to rule by them."[6] Over a good many years in the mid-eighteenth century Quaker legislators hampered the government

[4] Daniel J. Boorstin, *The Americans: The Colonial Experience* (New York: Vintage Books, 1958), p. 82.

[5] *Ibid.*, pp. 94-95.

[6] *Ibid.*, p. 43.

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from preparing to defend against Indians on the frontier. The matter came to a head during the French and Indian War when Indians rampaged over western Pennsylvania. After much debate and soul searching, most of the Quakers who adhered to a rigid pacifism withdrew from apolitical activities in 1756. Most of those who remained in the legislature were willing to compromise on the issue.[7]

By the middle of the eighteenth century most Americans had been weaned away from visionary ideas; their experience in the New World had brought them closer to that of the Old World, even as they were growing away from political connections with the old. Many were of a mind to learn from the wisdom of the ages.

The Great Awakening: Churchly People vs. Sectarians

American experience was tending to wean people away from established churches, too. The most generally established body was the Church of England. It was most vigorously established by law in Virginia, where it was not only supported by taxation but other denominations were scarcely tolerated. This attempt to make the church not only the cement of community but also the support of monarchy and other aristocratic establishments had largely failed. Many Virginians disliked having such an establishment, held the clergy in low esteem, and were quite willing to part with it when the opportunity offered itself. In many of the other colonies the established church was only one among many other denominations. In such circumstances, it was not very convincing to argue that all the people of a commonwealth must be of the same faith else the community would fall apart. This was clearly not the case. Several colonies did not even have an established church, and some of these were as cohesive as those which did.

There was more to the tendency away from established churches, however, than an unfavorable experience with them. There were principled objections which eventuated in new conceptions of the relation between government and religion and between the individual and society. The two major sources of these were the sectarian denominations and the Great Awakening.

The American population in the colonial period could be divided into two major religious groupings: the churchly people and the sectarians. Churchly people were those who had or sought to have an established church. Sectarians

[7] See *ibid.*, pp. 61-62.

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were those who neither had nor in principle desired an established church. The first of the sectarians to hold power was Roger Williams in Rhode Island. Williams denied that there was any efficacy to enforced religion. God chose whom he would and rejected the others; no good works or any other human agency or action could affect God's choice. Both the saved and the damned must live in society with one another, and government was necessary to that end. But it would be an abomination to attempt to enforce the dictates of religion on those not elected; it would disturb the peace of the community, give decision over religious matters to unqualified men in government, and would dangerously intertwine matters of this world and the next in ways that they could be distinguished and kept separate.[8]

There were other sectarians, some of whom did not trace from Calvinism. The Quakers were the most prominent. They did not believe that religion should be forced, and where they had authority there was religious toleration. Many German sectarians came over in the eighteenth century to settle in the areas where they would not be bothered or where there was religious toleration. Among them were Moravians, Mennonites, Amish, and so on.

The Great Awakening, however, played an even more prominent role in the breakdown of the ties between church and state. The Great Awakening was a revival movement which swept through the colonies in the 1740's and whose impetus continued through the latter part of the eighteenth century. The most prominent preachers were George Whitefield, Jonathan Edwards, and Gilbert Tennent. Whitefield was an Englishman who preached throughout the colonies with great impact. It was through this movement that evangelical piety began its move to become the dominant mode of American religion.

The evangelical movement took the emphasis away from doctrine, from forms, from ritual, and from what may be called in more general terms "churchiness." What was essential was not outward conformity to religious prescripts but inward conversion, a new heart, and a new man. To such an outlook, an established church tended to be only so much dead weight. The revival movement stressed individual conversion and individual piety and the improvement of society by way of improved individuals. The way to community was not through gov-

[8] See Alan Simpson, "How Democratic was Roger Williams?" in Goodman, *op. cit.*, pp. 188-89.

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ernment power but by changed men. The Great Awakening divided the older churches between those who accepted the new revivalist emphasis and those who championed the rational approach. An established church became, quite often, an anachronism, when what was no longer involved was a single church. Moreover, the Great Awakening cut across the bounds of colonies and religion to provide a common ground in religion to inhabitants throughout the colonies.

By the latter part of the eighteenth century, then, men were chastened by their experience with attempts at reconstructing society, by the use of government to achieve some religious end. They had also been enlivened by a new concept of the role of religion in society. For some Americans, religion may have become less important than it was to their forebears. To many others, it was still of utmost importance, so important that it should not be corrupted and stinted by the expediency of the exercise of power. To virtually all Americans, their religious background provided the framework through which they winnowed their ideas and in terms of which they builded.

Next: Colonial Political Experience

IDEAS ON LIBERTY

A Formula for Freedom

THE COLONISTS didn't have to contend with a politicalized Church, and later wrote the First Amendment to prevent such a development. The eighteenth-century pulpit in America stood staunchly for freedom. "The Americans," wrote Alexis de Tocqueville, "combine the notions of Christianity and liberty so intimately in their minds that it is impossible to make them conceive the one without the other."

The framers of our basic political documents and the people for whom they spoke were end products of the long religious and cultural heritage of Christendom. They willed religious, political, and social liberty as a necessary corollary of their religious commitment, and our relatively free society was, in part, a projection of the teaching of the colonial churches.

EDMUND A. OPITZ, *Religion and Capitalism: Allies Not Enemies*

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Individual Freedom

THOMAS F. BAYARD

I HAVE WITNESSED the insatiable growth of that form of state socialism styled "Protection," which I believe has done more to foster class legislation and create inequality of fortune, to corrupt public life, to banish men of independent mind and character from the public councils, to lower the tone of national representation, blunt public conscience, create false standards in the popular mind, to familiarize it with reliance upon state aid, divorce ethics from politics, and place politics upon the low level of a mercenary scramble, than any other single cause.

Step by step, and largely owing to the confusion of civil strife, it has succeeded in obtaining control of the sovereign power of taxation; never hesitating at any alliance, or the resort to any combination that promises to assist its purpose of perverting public taxation from its only true justification and function of creating revenue for the support of a government of the whole people, into an engine for the selfish and private profits of allied beneficiaries and combinations called "Trusts."

Under its dictation individual enterprise and independence have been oppressed, and the energy of discovery and invention debilitated and discouraged. It has unhesitatingly allied itself with every policy which tends to commercial isolation, dangerously depletes the Treasury, and saps the popular conscience by a scheme of corrupting favor and largesse to special classes, whose support is thereby attracted. . . .

It is incorrect to speak of "Protection" as a national policy, for

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From an address by the Honorable Thomas F. Bayard before the Edinburgh Philosophical Institution, circa 1897.

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that it can never be; because it can never be other than the fostering of special interests at the expense of the rest; and this overthrows the great principle of equality before the law, and that resultant sense of justice and equity in the administration of sovereign powers which is the true cause of domestic tranquility and human contentment. The value of "protective" legislation to its beneficiaries consists in its inequality; for without discrimination in favor of someone there is no advantage to anyone, and if the tax is equally laid on all, all will be kept upon the relative level from which they started; and this simply means a high scale of living to all, high cost of production of everything, and consequent inability to compete anywhere outside the orbit of such restrictive laws.

But the enfeeblement of individual energies and the impairment of manly self-reliance are necessarily involved; and the belief in mysterious powers of the state and a reliance upon them to take the place of individual exertion, fosters the growth of state socialism, and personal liberty ceases to be the great end of government.

IDEAS ON LIBERTY

The Curbing of Factions

So STRONG is this propensity of mankind to fall into mutual animosities that where no substantial occasion presents itself the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of the government.

JAMES MADISON, from No. 10 of *The Federalist Papers*

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Contra Marcuse

SINCE I find the prose of Herbert Marcuse to be an almost impenetrable thicket, maybe I am not the best person in the world to render an informed opinion on the quality of Dr. Eliseo Vivas's critical view of his subject in *Contra Marcuse* (Arlington House, $8.95). But Dr. Vivas has his own troubles with what he calls the "merciless jargon" which passes for style in the Marcusean world. He has done the best he can. So I will do the best I can to act as a collaborator in an effort to clarify what must, in the nature of things, resist translation. Like Dr. Vivas, I know what the "kids" get out of Marcuse: it is permission to "wreck the joint." I happen to share with Dr. Vivas at least a qualified fondness for "the joint" (meaning Western civilization), so I feel justified in regarding Marcuse as an evil influence even though I do not fully understand his motivations, his analyses, his grammar, and his rhetoric.

As I get it from the behavior of his disciples, Dr. Marcuse wants to level capitalistic society (and Soviet communist society, too) in hopes that "liberation" can somehow be found by the dwellers in the ruins. But this is to assume that human nature would behave differently in the future if it could only begin over again with a totally clean slate. Like Dr. Vivas, I consider such an assumption to be utterly crazy. Human beings are as they are, a most variegated bunch. As Schopenhauer (quoted by Dr. Vivas) puts it, they are "gregarious porcupines"; they want to get along with each other,

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but they find the going tough from time to time, particularly at close quarters. In Oriental societies, the "porcupines" have traditionally turned over the job of quill-pulling to tyrants (see Karl Wittfogel's devastating explorations of Asiatic "hydraulic societies"). But in the West, where the principles of voluntary association are at least dimly understood and partially accepted, the porcupines have developed some ability in choosing environments (Burke's "little platoons") that enable them to control their quills. Marcuse, who can't tolerate freedom to choose one's own associates, is, of course, anti-Burke. He is also anti-porcupine – i.e., anti-human – at least in his net effect on those who profess to understand him.

"Play and Display"

I confess that Marcuse's distinctions, if taken literally, make no contact with the world that I know. He thinks, or appears to think, that our vaunted tolerance is "repressive" of the Left. But I concur with Dr. Vivas that Dr. Marcuse's own academic world is, in general, repressive of the Right. Again, Dr. Marcuse thinks that our technology, our Puritan work habits, and our addiction to "affluence" (meaning a multiplication of gadgets), all combine to keep us from being "liberated" to "play and display." But this is nonsense. If we didn't have a high technology and an ability to work at creating the conditions of affluence, we would be left in a starveling condition. Few people would have the energy to "play and display."

What does Dr. Marcuse mean by "playing" and "displaying," anyway? A man watching a pro football game on a Sunday afternoon, a beer can in his hand, is indulging his playful instincts in a spectatorial way. The players themselves are engaged in display of a most skillful kind. My wife's modern dance students take their directions from a most playful nature, and they learn an art and a technique of display that must please them or they would not devote so many hours to master what they call the vocabulary of movement. I see "play and display" all around me, on skating rinks, tennis courts, and at small boat marinas. I also see it on city streets where a "liberated" public has suddenly taken to making life a huge costume party. Anything goes in dress or wigs; I see Beau Brummel walking down East Forty-fifth Street in New York City with Kit Carson or Jim Beckwourth, the Mountain Man. Beau Brummel looks in one direction to ogle a girl wearing hot pants; Jim Beckwourth prefers a more un-

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kempt lass in torn blue jeans and a sweat shirt. The scene has its esthetic drawbacks, but a universal costume party can hardly be considered "repressive." It also happens to be financed by our affluence, which supports a whole new industry of wig makers, hair weavers, and anti-barbers.

The Three M's of Coercion

The West, being generally voluntaristic, will pass on from its costume party phase to something else. But Dr. Marcuse will not be pleased. Dr. Vivas calls him one of the "three M's," the two other being Marx and Mao. In their zeal to change the "relations of production" (whatever that may mean), the "three M's" have all been willing to accept a philosophy of alleged progress that depends on sending recalcitrants to the wall. But what has this to do with freeing men to "play and display"? Dr. Vivas asks a nice question: "In view of the way men seem to be eager to give up their freedom to despots and demagogues in exchange for promissory notes whose only collateral is the rhetoric which they are offered, on what ground does Marcuse say that the true interest of the individual is the interest in freedom?" The individual in the West has the protection of his institutions, which are those of a pluralistic society. Different groups have wanted different freedoms ("English liberties"), and, in fighting for rights, even class rights, they have achieved a precarious balance that permits the more eccentric to find special niches for themselves in the interstices. I like it that way, so I don't like Marcuse.

A Study in Nonsense

This is not to say that I understand him. I only understand the effect he has on others. His use of words, to me, defies common sense. When he says that we must reject "the tyranny of the genital" and "re-eroticize" ourselves in conformance with something called "polymorphous" (or many-shaped) sexuality, I can only think that he is in favor of turning human beings into eunuchs. The reproductive drive is present in all animals, indeed, in all nature. So how get rid of the "tyranny of the genital" without getting rid of the human race? Dr. Vivas, with his own common sense, remarks that Dr. Marcuse doesn't know what he is talking about when he speaks of the "tyranny of the genital" anyway. Recalling a "proto-Kinsey survey" published in the middle twenties, Dr. Vivas dryly observes that "the variations of sexual needs among people" are "quite wide."

The best things in Dr. Vivas's

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book are the pages in which he defends our civilization against all the tabula rasa wreckers, whether they are Marcusean, Marxian or Maoist. It is true, says Dr. Vivas, that "Big Brother" (meaning the Big State with its computers) has our finger prints and our dossiers. But nobody suffers from prosecution for calling Lyndon Johnson "Old Corn Pone" or alleging that Richard Nixon has broken faith with conservatives. If one were to call Brezhnev "Old Corn Pone" in front of Lenin's tomb, it would mean Siberia. In Richard Daley's Chicago the worst that could happen to a public name-caller would be a charge of disorderly conduct. Quite a difference, says Dr. Vivas. The measure of Dr. Marcuse's stupidity is that in his "colossal self-righteousness" he can't perceive that there is any difference at all.

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RICHARD WEAVER, *Life Without Prejudice*

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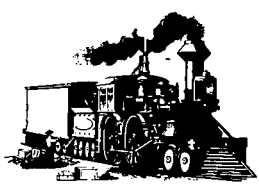

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